Lit.

FIDEL PELEJO, ROSARIO PELEJO, JAIME PELEJO, ALFONSO P. JUGUETA and MARIA P. JUGUETA,
Petitioners,

- versus - C.T.A. CASE NO.1822

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/20/76

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DECISION

This case comes up on respondent's deficiency income tax assessment amounting to ₱82,371.99 for taxable year 1958 issued against the Pelejo Hermanos, Inc., and raises the question of whether petitioners Fidel Pelejo, Rosario Pelejo, Jaime Pelejo, Alfonso P. Jugueta and Maria P. Jugueta, who are held liable thereto, constituted a "corporation" taxable as such, when they sold a tract of agricultural land, situated in the island of Ballesin, Municipality of Polillo, Province of Tayabas (now Quezon), on December 23, 1958. For income tax purposes, the term "corporation" under Section 84(b) of the National Internal Revenue Code includes partnerships, no matter how created or organized, joint-stock companies, joint accounts (cuentas en participacion), associations or insurance companies, but does not include duly registered general co-partnerships (companias colectivas).

None of the essential facts is in dispute and as stated by respondent in his letter decision appealed from, and which is Appendix "4" of the petition for review and presented by petitioners Rosario Pelejo, Alfonso P. Jugueta and Maria P. Jugueta as Exhibits "D", "D-1", "D-2", "D-3", and "D-4", are as follows:

> (1) Originally, the land in question was owned by Pelejo Hermanos, Inc., a family corporation organized by the spouses, Salvador Pelejo and Juana Alma, and their children, Rev. Fr. Eulogio A. Pelejo, Fermina A. Pelejo and Paulino A. Pelejo, for the purpose of buying from the Government a tract of agricultural land in Ballesin, Polillo, Province of Tayabas. After its incorporation, Pelejo Hermanos, Inc. filed the corresponding application for the purchase of the said agricultural land, which was approved by the Government. The land was then occupied, cultivated and planted to coconuts, and after complying with the requirements of law, the land was surveyed and Sales Patent was issued on January 6, 1926 in favor of Pelejo Hermanos, Inc., which was inscribed in the Office of Register of Deeds of Tayabas on January 26, 1926 as Original Certificate of Title No. 19.
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> (2) The spouses, Juana Alma and Salvador Pelejo, died on January 13, 1923 and August 20, 1923, respectively. Consequently, their shares in the corporation passed to their heirs, Rev. Fr. Eulogio A. Pelejo, Fermina A. Pelejo and Paulino A. Pelejo. When Fermina died on February 24, 1955 (1925),

her share was inherited by the children Marta P. Jugueta, Maria P. Jugueta and Alfonso P. Jugueta. Thus, when Original Certificate of Title No. 19 was issued and registered on January 26, 1926, the shareholders of the corporation were only Rev. Fr. Eulogio A. Pelejo, Paulino A. Pelejo and the heirs of Fermina A. Pelejo.

(3) On August 17, 1939, Fr. Eulogio A. Pelejo, Paulino A. Pelejo and the aforementioned heirs of Fermina A. Pelejo partitioned the said agricultural land among themselves. For this purpose, a Deed of Extrajudicial Partition was executed whereby the land in question was apportioned and adjudicated to the heirs of the late Fermina A. Pelejo and the children of Paulino A. Pelejo, namely, Rosario Pelejo, Jaime Pelejo and Fidel Pelejo. In the same document, Rev. Fr. Eulogio A. Pelejo and Paulino A. Pelejo assigned, conveyed and transferred in favor of Maria P. Jugueta, Marta P. Jugueta, Alfonso P. Jugueta, Rosario Pelejo, Jaime Pelejo and Fidel Pelejo, all their rights and interests in the land. Thereafter, the said Deed of Extrajudicial Partition was registered and consequently, Original Certificate of Title No. 19 was cancelled and in lieu thereof, Transfer Certificate of Title No. 4650 was issued in favor of the six persons abovementioned. However, they left the property intact and undivided, and continued to hold the same as co-owners.

(4) After the death of Marta P. Jugueta, she was succeeded by her son, Gilberto de la Calzada, who, with the remaining share-holders, petitioned the Register of Deeds of Tayabas to cancel Certificate of Title No. 4650, which was granted, and in lieu thereof, Transfer Certificate of Title No. 5237 was issued. Subsequently, Gilberto de la Calzada sold his right, interest and participation in the land to Maria P. Jugueta, Rosario Pelejo and Fidel Pelejo, through a Deed of Sale which was duly annotated on Transfer Certificate

of Title No. 5237 on December 23, 1958. Thus, when the land was sold to San Pablo Oil Factory, Inc. on December 23, 1958, the registered owners were Maria P. Jugueta, Alfonso P. Jugueta, Jaime Pelejo, Rosario Pelejo and Fidel Pelejo.

From this state of facts, respondent drew the conclusion that when the owners of the parcel of land in question, namely, petitioners Maria P. Jugueta, Alfonso P. Jugueta, Jaime Pelejo, Rosario Pelejo and Fidel Pelejo sold the said property to the San Pablo Oil Factory, Inc., on December 23, 1958, they constituted an unregistered partnership taxable as a corporation pursuant to Section 84(b) of the Tax Code, in relation to Section 24 thereof. Accordingly, a deficiency income tax assessment of ₱82,371.99, including surcharge, compromise and deficiency interest, was issued against the alleged corporation, Pelejo Hermanos, Inc. on June 20, 1962.

On the other hand, petitioners take the position that since 1939, when Fr. Eulogio A. Pelejo, Paulino A. Pelejo and the heirs of Fermina A. Pelejo partitioned the said agricultural land among themselves, to 1958, they never organized any corporation and at the time of the sale, the owner of the land was no longer the

Pelejo Hermanos, Inc., but petitioners herein who were the registered owners of said land as evidenced by Transfer Certificate of Title No. 5257. And in keeping the property intact and undivided, they did not constitute a partnership nor a common joint stock company, or joint accounts, within the contemplation of Section 84(b) of the Tax Code, for in reality they were merely co-owners of the land.

Inferentially, petitioners concede at least that from the time Pelejo Hermanos, Inc., was organized by the spouses Salvador Pelejo and Juana Alma, and their children, Rev. Fr. Eulogio A. Pelejo, Fermina A. Pelejo and Paulino A. Pelejo, for the purpose of buying from the Government a tract of agricultural land in Ballesin, up to August 17, 1939, when the said land was partitioned, Pelejo Hermanos was a "corporation" as that term is used under Section 84(b) of the Tax Code. While the members of the Pelejo family might not have incorporated themselves formally into a corporation under the Corporation Law, it cannot be denied that they at least associated themselves informally for the common purpose of engaging in agriculture.

At any rate, the tax in question is one imposed upon "corporations", which, strictly speaking, are distinct and different from "partnerships". When the Internal Revenue Code includes "partnerships" among the entities subject to tax on "corporations", said Code must allude, therefore, to organizations which are not <u>necessarily</u> "partnerships", in the technical sense of the term. Likewise, as defined in Section 84(b) of said Code, "the term corporation includes partnerships, <u>no matter how created or organized</u>." The qualifying expression clearly indicates that a joint venture need not be undertaken in any of the standard forms, or in conformity with the usual requirements of the law on partnerships, in order that one could be deemed constituted for purposes of the tax on corporations. Again, pursuant to said Section 84(b), the term "corporation" includes, among others , "joint accounts, (<u>cuentas en participacion)</u>" and "associations", none of which has a legal personality of its own, independent of that of its members. (Evangelista v. Collector of Internal Revenue, G.R. No. L-9996, October 15, 1957, 102 Phil. 140.)

Taking the dictionary definition of an association as a "union of persons in a company for some particular purpose," Congress by this comprehensive and inclusive word meant to include unincorporated bodies constituted by the association of men to carry on some common, charitable or educational purpose. (O.T. Kang Scholarship Foundation v. Vera, C.T.A. Case No. 1988, May 30, 1970, Certiorari denied, G.R. No. L-32491, September 23, 1970, citing Bok et al. v. McCaughan, 42 F(2d) 618). Among the features of an association taxable as a corporation are: (1) title to the property held by the entity, (2) centralized management, (3) continuity uninterrupted by deaths among the beneficial owners, (4) transfer of interest without affecting the continuity of the enterprise, and (5) limitation of the personal liability of participants. (See Morrissey v. Commissioner, 296 U.S. 344, 56 S.Ct. 289, Commissioner of Internal

Revenue v. Rector & Davidson, 111 F(2d) 332; 1965 Prentice Hall, Par. 3224). Treasury Regulations 111, Section 29.3797-4, (U.S.), specify three of the foregoing features as being sufficient to make an entity taxable as an association, viz; (1) centralized management; (2) continuity of existence despite death of a partner; and (3) continuity of the existence despite a change in ownership.

It is true that in the United States from whom these authorities are taken, these features are used more for the purpose of distinguishing associations from partnerships. Under the Internal Revenue Laws of the United States, "corporations" are taxed differently from "partnerships". By specific provision of said laws, such "corporations" include "associations, joint-stock companies and insurance companies." (See Evangelista v. Collector of Internal Revenue, supra.) However, under Section 84(b) of the Tax Code, for purposes of the tax on corporations, both associations and partnerships, no matter how created or organized, (with the exception only of duly registered general partnerships), are included within the purview of the term "corporations." Consequently, whether the intention of the members of the Pelejo family in organizing the Pelejo Hermanos, Inc., was to form a corporation or a partnership or merely an association, the same is a "corporation" under Section 84(b) of the Tax Code taxable as such under Section 24 thereof.

Now to the case at bar, it will be noted that most of the salient features of an association taxable as a corporation as mentioned above were present in the Pelejo Hermanos, Inc. Organized as a family corporation for the purpose of buying from the Government a tract of land, it was utilized as a medium of engaging in agriculture. (Exh.C-1, p. 33, C.T.A. rec.) The title to the property was held by the entity as the sales patent issued by the Government was in the name of Pelejo Hermanos, Inc., which was inscribed in the Office of the Register of Deeds of Tayabas as Original Certificate of Title No. 19. Despite the deaths of Juana Alma on January 13, 1923, Salvador Pelejo on August 20, 1923 and Fermina Pelejo on February 24, 1925, there was continuity of existence of the Pelejo Hermanos, Inc., as their shares in the corporation merely passed to their respective heirs. Since the corporation was not terminated or liquidated inspite of these deaths, there was also continuity of existence notwithstanding changes in ownership. And considering that Pelejo Hermanos, Inc., was a family corporation consisting of members of the same family, it probably had centralized management with authority of one or two family elders to make the management decisions necessary to the conduct of the organization's business. Finally, the word "Incorporated" was added to the firm name, and since it dealt and transacted business with third persons, including the Government, in that concept, it seemed clear that there was, or least it created the impression of, limitation of the personal liability of the members.

In the ultimate analysis, therefore, there seems to be no doubt that the Pelejo Hermanos, Inc., from the time it was organized by the spouses, Salvador Pelejo and Juana Alma, and their children, Rev. Fr. Eulogio A. Pelejo, Fermina A. Pelejo and Paulino A. Pelejo, up to August 17, 1939, when Rev. Fr. Eulogio A. Pelejo, Paulino A. Pelejo and the heirs of Fermina A. Pelejo partitioned the agricultural land among themselves, was a corporation, taxable as such under Section 84(b) of the Tax Code, in relation to Section 24 thereof. For purposes of taxation, the National Internal Revenue Code makes its own classification and prescribes its own standards of classification. The term "corporation" is not limited to the artificial entity usually known as a corporation, but also includes:

> 1. Associations.-
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> The term "association" is not used in any narrow or technical sense. It includes any organization, created for the transaction of designated affairs, or the attainment of some objects, which, like a corporation, continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declaration of trust, a statute, or otherwise. It includes a voluntary association, a joint-stock corporation or company, a "business" trust, a "Massachusetts" trust, a "common law" trust, and "investment" trust (whether of the fixed or the management type), an interinsurance exchange operating through an attorney in fact, a partnership association, and any other type of organization (by whatever name known) which is not, within the meaning of the Code, a trust or an estate, or a partnership." (Evangelista V.Collector, supra, citing 7A Merten's Law of Federal Income Taxation, p. 788.)
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> 2. Partnership.-
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> Under the term "partnership", it includes not only a partnership as known at common law but, as well, a syndicate, group, pool, joint venture, or other unincorporated organization which carries on any business, financial operation or venture, and which is not, within the meaning of the Code, a trust, estate or

> a corporation x x x" (Evangelista v. Collector, supra, citing 7A Merten's Law of Federal Income Taxation, p. 789).
>
> The term "partnership" includes a syndicate group, pool, joint venture or other unincorporated organization, through or by means of which may business, financial operation, or venture is carried on x x x"; (Evangelista v. Collector, supra citing 8 Merten's Law of Federal Income Taxation, p. 562).

which for purposes of the tax on corporations are within the purview of the term "corporations". (See Evangelista v. Collector, supra.)

When on August 17, 1939, Fr. Eulogio A. Pelejo, Paulino A. Pelejo and the heirs of Fermina A. Pelejo, partitioned the agricultural land in question among themselves, petitioners, however, argue that "said corporation should be considered as de facto dissolved or extinct, for it has no more property to own, possess or administer. Accordingly, Pelejo Hermanos, Inc., ceased to exist in 1939, hence it cannot be taxed for the sale of the property in question in favor of San Pablo Oil Factory on December 23, 1958." (p. 37, CTA rec.)

In arguing that at the time of the sale, the owner of the land was no longer the Pelejo Hermanos, Inc., but petitioners as registered owners thereof in the concept of co-owners, petitioners failed to indicate their nebulous position somewhere in between as to how the Pelejo Hermanos, Inc., as a corporation was liquidated and terminated. And averring that in keeping the property intact and undivided, they did not become a partnership nor a common joint stock company, or joint accounts, withih the contemplation of Section 84(b) of the National Internal Revenue Code, they concluded that they were merely co-owners of the said land. (See pp. 35-36, CTA rec.)

In keeping the property in question intact and undivided, and continuing to hold the same as co-owners, we note that petitioners did not liquidate and wind up the affairs or business of the Pelejo Hermanos, Inc. As a matter of fact, they continued and carried on the purpose or business for which the corporation was organized without any apparent substantial change. The entity which they claim to be a co-ownership bared the same name; had the same owners-- the successors-in-interest of the original corporation partly by inheritance and partly by donation. It resembled in many ways the Pelejo Hermanos, Inc., a "corporation" which they admit as included within the definition of corporation under Section 84(b) of the Revenue Code.

As a matter of fact, the records show that income tax returns were filed by Pelejo Hermanos, Inc., at least, in 1954, 1955, 1956 and 1957. The first was signed by petitioner Rosario Pelejo Rotaquio as President and petitioner Maria P. Jugueta as Treasurer; the second was signed by petitioner Fidel Pelejo as Treasurer; the third was signed by petitioner Maria P. Jugueta as President and petitioner Fidel Pelejo as Treasurer; and the fourth was signed by petitioner Fidel Pelejo as Treasurer. Examination of the items of the income tax returns for 1957 (Exhibit "1", pp. 42-44, BIR records) and 1958 (Exhibit "2", pp. 45-50, BIR records) disclosed that there were salaries paid for manager and treasurer, for bookkeeper, and also expenses for office supplies.

While petitioners claim that "the data contained in the income tax returns are indicated by the employee in the municipal treasurer's office who prepared the same, and the preparation thereof in such form is a case of formality only," such an explanation shows lack of regard rather than lack of understanding of the commands of the law. The data or information to be set forth in the returns are for the purpose of establishing or determining the correct taxes to be levied, assessed or collected from taxpayers and the return can be used as evidence in any case where the Government is interested in the result. (See Cu Unjieng v. Posadas, 58 Phil. 360). To prepare or file income tax returns for the sake of formality only is ,therefore, to trifle with the serious and specific provisions of the law, as well as to frustrate the policy and objectives of the State. While the internal revenue laws are not penal in nature, penalties, both civil and criminal, are provided for their violations. (See Sections 73 to 76 of the National Internal Revenue Code for the penal provisions of the Income Tax Law.) And it can never be said that petitioners are ignorant of these penalties because they were brought into bold relief in page one of the several, not just one, income tax returns which they prepared, signed and filed.

Although an organization was not legally organized as a corporation, if it filed a return as a corporation and operated its business as a corporation, it would be considered an association taxable as a corporation. (R.L. Brown Coal & Coke

Co. 14, BTA 609.) This would also be true if the charter had been forfeited as well as where there was a valid charter and business was carried on, although no capital stock was issued, no incorporators meetings were held and no officers or directors were appointed or elected. (John Crocker, 32 BTA 861, aff'd 84 F(2d) 64; Knoxville Truck Sales & Services, Inc., 10 TC 616; 7 Merten's Law of Federal Income Taxation 38A.33) And under partnership law, it has already been ruled that when a partnership is dissolved and the business or purposes are continued, and the successor in interest continued to operate its objects, there is a "de facto partnership" among the surviving partners or successors in interest. (Antonio Goquiolay v. Sycip, G.R. No. L-11840, July 26, 1960, 108 Phil. 947.)

Petitioners, as successors-in-interest of the original corporation Pelejo Hermanos, Inc., having continued and carried on its business and affairs for which it was organized without any change; filed income tax returns for it as a corporation; chosen its corporate officers from among themselves; and kept its property intact and undivided, although they were the registered owners, until December 23, 1958 when the property was sold to the San Pablo Oil Factory, Inc., in the light of the above, said Pelejo Hermanos, Inc., was still considered a corporation under Section 84(b) of the Revenue Code in 1958 and taxable as such under Section 24 of the same Code. Accordingly, we find no valid and legal justification for cancelling or disturbing the 1958 deficiency income tax assessment of respondent amounting to ₱82,371.99, including surcharge, compromise and deficiency interest, issued against the corporation Pelejo Hermanos, Inc. on June 20, 1962. The deficiency income tax assessment of the Commissioner of Internal Revenue should therefore be sustained.

As a consequence of this deficiency income tax assessment of respondent Commissioner of Internal Revenue on the gain derived from the sale of the property of the Pelejo Hermanos, Inc., to the San Pablo Oil Factory, Inc., individual deficiency income tax assessment notices for 1958 were also issued against petitioners on June 20, 1962 on their net shares of the profit, as follows:

Jaime Pelejo . . . . ₱9,385.72

Rosario Pelejo	12,457.26
Maria Jugueta	12,728.20
Alfonso Jugueta	9,523.76
Fidel Pelejo	11,942.78

with the request that payment thereof be made not later than July 10, 1962.

The records show that on June 14, 1967 respondent instituted a complaint in the Court of First Instance of Manila, Civil Case No. 69798, entitled "Republic of the Philippines v. Jaime Pelejo, et. al.", to effect collection of the individual deficiency income taxes as they have already become final and executory.

It appears that in the meantime Fidel Pelejo paid the individual income tax assessed against him as well as his proportionate share of the corporate tax and was subsequently dropped from the complaint. After due hearing, the Court of First Instance of Manila rendered its decision dated September 30, 1970 ordering petitioners to pay the deficiency income taxes individually assessed against them, plus the penalties thereon incident to deliquency excluding Fidel Pelejo who was previously dropped from the complaint. Petitioners, however, appealed the decision to the Court of Appeals docketed as CA-G.R. No. 48065-R. Pending submission of briefs by the parties, Rosario Pelejo paid her individual deficiency income tax liability under Presidential Decree No. 68, and she was dropped from the case in a Resolution of the Court of Appeals dated May 8, 1972.

Brought to the fore, therefore, is the question of whether or not this Court has jurisdiction to take cognizance of the individual deficiency income tax assessments of petitioners.

The determination of the correctness or incorrectness of a tax assessment to which the taxpayer is not agreeable falls within the jurisdiction of the Court of Tax Appeals and not of the Court of First Instance, for under the provision of Section 7(1) of Republic Act No. 1125, the Court of Tax Appeals has exclusive appellate jurisdiction to review on appeal any decision of the Commissioner of Internal Revenue in cases involving disputed assessments and other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.

(Blaquera v. Rodriquez, G.R. No. L-10935, April 28, 1958; 103 Phil. 511; San Juan v. Vasquez, G.R. No. L-16814, Sept. 1961, 3 SCRA 92.) The pendency of the taxpayer's appeal in the Court of Tax Appeals (and in the Supreme Court) have, therefore, the effect of legally preventing the Commissioner of Internal Revenue from instituting an action in the Court of First Instance for the collection of the tax. (Republic v. Ker & Company, Ltd., G.R. No. L-21609, Sept. 29, 1966, 18 SCRA 207.)

The petition for review in this case was filed on December 29, 1966. From December 29, 1966, when petitioners filed their petition for review in this Court contesting not only their liability for corporate income tax in the amount of ₱82,371.99 but also allegedly the legality or validity of the deficiency income tax assessments individually issued against them for 1958, until the termination of this appeal, respondent logically is prevented from filing an action in the Court of First Instance to collect the individual deficiency income taxes. (Ledesma, et al., v. Court of Tax Appeals, G.R. No. L-11343, Jan. 29, 1958, 102 Phil. 931; Republic v. Ker & Company, Ltd., supra.) The legality or correctness of these alleged individual deficiency income taxes has not yet been finally determined by the Court of Tax Appeals. Besides, to do so would be to violate the judicial policy of avoiding multiplicity of suits and the rule on lis pendens. (Par. (g), Sec. 1, Rule 16, Rules of Court; Republic v. Ker & Company, Ltd., supra.) Furthermore, an appeal by the taxpayer to the Court of Tax Appeals is at the same time an action for collection by the Government since the latter is a concomitant of the appeal. (Angeles Electric Corporation v. Commissioner of Internal Revenue, CTA Case No. 1773, Dec. 8, 1975; See also Alhambra Cigar & Cig. Mfg. Co. v. Collector of Internal Revenue, 105, Phil. 1337, Unpub; Coll. of Int. Rev. v. Bohol Land Transp. 107 Phil. 965; Suñga v. Coll. of Int. Rev., CTA Case No. 676, Oct. 25, 1961; Fernandez Hnos. v. Comm. of Int. Rev. G.R. Nos. L-21551, L-21557, L-24972, and L-24978, Sept. 30, 1969, 29 , SCRA 552.)

The fact, therefore, that the Court of First Instance of Manila took cognizance of Civil Case No. 69798, entitled "Republic of the Philippines v. Jaime Pelejo, et al.," which was filed on June 14, 1967, or after this Court has already acquired jurisdiction over the present appeal and decided the said case against petitioners, which is for the collection of the deficiency income taxes individually assessed against them, would seem to show that these individual deficiency income tax assessment have already become final, executory and demandable. Otherwise, the Court of First Instance should have dismissed the complaint in Civil Case No. 69798 upon the ground that the Court of Tax Appeals had already acquired jurisdiction over the alleged controverted individual deficiency income tax assessments prior to the institution of the complaint and the judgment in this appeal in the Court of Tax Appeals would constitute res adjudicata between the same parties. (See Comm. of Int. Rev. v. Ledesma, et al., G.R. No. L-17509, Jan. 30, 1970, 31 SCRA 95.)

It appearing that the Court of First Instance of Manila, after due hearing, has already rendered its decision ordering petitioners to pay the deficiency income taxes individually assessed against them, plus the penalties thereon incident to delinquency, excluding Fidel Pelejo who was previously dropped from the complaint, and the decision was appealed to the Court of Appeals, this Court must necessarily refrain from expressing an opinion whether the individual income tax assessments of petitioners are included in the petition for review filed in this case and from taking cognizance of the said assessments.

Accordingly, petitioners are ordered to pay the amount of ₱82,371.99 as deficiency income tax for 1958 of the Pelejo Hermanos, Inc., plus the surcharge and interest which have accrued thereon incident to delinquency, pursuant to Section 51(e) of the National Internal Revenue Code, as amended by Republic Act No. 2343, minus the proportionate share thereon of Fidel Pelejo, who has previously effected settlement thereof.

WHEREFORE, the appealed decision is hereby affirmed, with costs against petitioners.

SO ORDERED.

Quezon City, August 20, 1976.

Amante Filler
AMANTE FILLER
Associate Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge