REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB N0. 1194
(CTA Case No. 8460)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE BANK OF COMMUNICATIONS,
Respondent.

CTA EB NO. 1199
(CTA Case No. 8460)

Present:

DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, JJ.

Promulgated:

MAR 21 2016 2:14 p.m.

x -- x

DECISION

DEL ROSARIO, PJ.:

CTA EB No. 1194 is a Petition for Review filed by Philippine Bank of Communications (PBCom), while CTA EB No. 1199 is a Petition for Review filed by the Commissioner of Internal Revenue

(CIR) from the Decision dated April 24, 2014[1] rendered by the Second Division[2] of this Court in CTA Case No. 8460, entitled *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, the dispositive portion of which reads, as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱14,387,759.96, representing petitioner's excess/unutilized creditable withholding taxes for calendar year 2009.
>
> **SO ORDERED."**

THE PARTIES

PBCom, the petitioner in CTA EB No. 1194, is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at PBCOM Tower, 6795 Ayala Avenue corner V.A. Rufino Street, Makati City.[3]

On the other hand, the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1199, is the official authorized under Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA).[4]

THE FACTS

On April 15, 2010, PBCom filed with the BIR its Annual Income Tax Return[5] (ITR) for calendar year 2009 which shows a net loss of ₱592,038,205.25 and an overpayment of income tax of

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[1] CTA Division Docket, pp. 635 to 655.
[2] Composed of Senior Associate Justice Juanito C. Castañeda, Jr., as Chairperson, and Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas, as members.
[3] Rollo (CTA EB No. 1194), p. 2.
[4] Rollo (CTA EB No. 1199), p. 17.
[5] Exhibit "C".

₱85,374,026.88, comprising of "Prior Year's Excess Credits" of ₱40,811,031.83 and "Creditable Tax Withheld per BIR Form 2307 for the Fourth Quarter" of ₱44,562,995.05. PBCom opted to be issued a tax credit certificate (TCC) by marking the appropriate box in its ITR.

On May 6, 2010, PBCom filed an Amended Annual ITR for calendar year 2009 showing the same result of operations as indicated in the original return filed and opted to be issued a TCC by marking the appropriate box in the ITR.[6]

On March 15, 2012, PBCom filed a written claim for the issuance of a TCC with the BIR[7] in the amount of ₱44,562,995.05, representing its excess/unutilized creditable withholding taxes (CWTs) for taxable year 2009.

On April 12, 2012, in order to preserve its right and to toll the running of the prescriptive period to file a judicial claim, PBCom filed a Petition for Review before this Court.[8]

In her Answer,[9] the CIR raised the following special and affirmative defenses: (a) taxes collected are presumed to be in accordance with laws and regulations; (b) PBCom's alleged claim for refund is subject to routinary investigation/examination by the BIR; (c) taxes are essential to government's very existence; hence, the dictum that taxes are the lifeblood of the government; (d) in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitution or statutory law and cannot be permitted by vague implications; (e) PBCom must comply with the requirements laid down by law in order to be entitled to the refund being sought; (f) petitioner failed to submit the relevant documents to support its application for refund in compliance with the prescribed checklist pursuant to RMO No. 53-98 and RR No. 2-2006; (g) the amount claimed is not properly documented; (h) petitioner must also comply with the provision of Section 76 of the NIRC of 1997, as amended;

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[6] Exhibit "D".
[7] Exhibit "M".
[8] CTA Division Docket, pp. 6-21.
[9] CTA Division Docket, pp. 224 to 235.

and, (i) petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim.

During pre-trial, both parties filed their pre-trial briefs[10] on June 19, 2012 and June 29, 2012, respectively, and their Joint Stipulation of Facts and Issues on July 30, 2012.[11] Upon approval thereof, the pre-trial was deemed terminated.

Trial ensued during which both parties presented their respective testimonial and documentary evidence. Upon filing of PBCom's "Memorandum for Petitioner"[12] on August 23, 2013 and the CIR's "Memorandum"[13] on October 2, 2013, the case was deemed submitted for decision on October 4, 2013.[14]

On April 24, 2014, the Second Division of this Court rendered the assailed Decision partially granting PBCom's Petition for Review. Aggrieved, both parties filed their respective Motions for Partial Reconsideration, which were both denied for lack of merit in the Resolution of the Court in Division dated June 20, 2014.[15]

Both parties appealed to the Court *En Banc.* On July 10, 2014, PBCom filed its Petition for Review,[16] docketed as CTA EB No. 1194 while the CIR filed her Petition for Review[17] on July 25, 2014, docketed as CTA EB No. 1199.

On August 14, 2014, the Court *En Banc* consolidated CTA EB No. 1199 with CTA EB No. 1194, the case bearing the lower docket number.[18]

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[10] CTA Docket, pp. 238 to 243 & 244 to 258.
[11] CTA Docket, pp. 272 to 274.
[12] CTA Docket, pp. 595 to 608.
[13] CTA Docket, pp. 619 to 631.
[14] Resolution, CTA Docket, p. 632.
[15] Rollo (CTA EB No. 1194), pp. 33 to 38; Rollo (CTA EB No. 1199), pp. 54 to 57.
[16] Rollo (CTA EB No. 1194), pp. 1 to 526.
[17] Rollo (CTA EB No. 1199), pp. 16 to 62.
[18] Rollo (CTA EB No. 1194), pp. 618 to 619.

On August 18, 2014, the Court *En Banc* issued a Resolution[19] ordering the CIR to comment on PBCom's Petition for Review, within ten (10) days from notice. On September 22, 2014, the CIR filed her Comment (Re: Petitioner's Petition for Review).[20]

On October 21, 2014, the Court *En Banc* ordered PBCom to comment on the Petition for Review in CTA EB No. 1199, within ten (10) days from receipt thereof. [21] PBCom filed its Comment on November 14, 2014.[22]

On December 22, 2014, the Court *En Banc* gave due course to both Petitions for Review and ordered the parties to file their simultaneous memoranda, within thirty (30) days from notice, after which the petitions shall be deemed submitted for decision. [23]

Considering the CIR's "Manifestation"[24] filed on February 16, 2015 stating that she is adopting her Petition for Review filed on July 25, 2014, as her memorandum, and considering PBCom's "Memorandum"[25] filed on February 20, 2015, the cases were deemed submitted for decision on March 12, 2015.[26]

ISSUES

In CTA EB No. 1194, PBCom raised the following issues:

I

This Honorable Court's 2nd Division erred in not considering that the ruling in *Mermac, Inc. vs. CIR* is not applicable to the instant case;

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[19] Rollo (CTA EB No. 1194), pp. 621 to 622.
[20] Rollo (CTA EB No. 1194), pp. 630 to 634.
[21] Rollo (CTA EB No. 1194), pp. 637 to 638.
[22] Rollo (CTA EB No. 1194), pp. 639 to 647.
[23] Rollo (CTA EB No. 1194), pp. 650 to 651.
[24] Rollo (CTA EB No. 1194), pp. 652 to 655.
[25] Rollo (CTA EB No. 1194), pp. 656 to 691.
[26] Rollo (CTA EB No. 1194), pp. 696 to 697.

II

> This Honorable Court's 2nd Division erred in considering solely the tax payments supported by BIR Form No. 2307 amounting to ₱17,697,365.82 as satisfying the second requirement for a tax refund; and,

III

> This Honorable Court's 2nd Division erred in finding that only ₱14,387,759.86 corresponds to income payments included in petitioner's general ledger and annual income tax return for taxable year 2009.[27]

On the other hand, in CTA EB No. 1199, the CIR raised the sole issue of:

> Whether respondent is entitled to a refund or tax credit of alleged excess and unutilized creditable withholding taxes for calendar year 2009 in the total amount of ₱44,562,995.05.[28]

In its Petition, PBCom contends that the ruling in *Mermac, Inc. v. Commissioner of Internal Revenue,* which relied heavily in *Banco Filipino Savings Bank v. Court of Appeals,* does not apply to the case at bar; that in the *Banco Filipino* case, petitioner therein relied on the confirmation receipts with the corresponding official receipts and payment orders to support its claim for refund; that the fact of withholding with respect to the sale of its Real and Other Properties Owned and Acquired (ROPOA), as well as the sale of its ordinary assets, interest from commercial loans, rentals and other services, are supported by various Certificates of Creditable Taxes Withheld at source (BIR Form 2307), Withholding Tax Remittance Returns (BIR Form 1606), Capital Gains Tax Returns (BIR Form 1706), and BIR Certification of Remittance, which were reviewed and verified by the ICPA; and, that the ICPA followed proper accounting procedures in ascertaining the amounts actually withheld, and such fact was never disputed during trial.

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[27] Petition for Review dated July 8, 2014, Rollo (CTA EB No. 1194), p. 6.
[28] Petition for Review dated July 23, 2014, Rollo (CTA EB No. 1199), p. 18.

PBCom further posits that in the course of the ICPA's examination, it was found out that BIR Form No. 1706 was erroneously used by PBCom's representatives in filing the withholding taxes, as the forms were provided by the BIR agents who computed the taxes to be withheld; that there is nothing in Revenue Regulations No. 2-98 that would prejudice PBCom from claiming a refund/issuance of TCC despite the erroneous use of other BIR Forms; that in prescribing BIR Form No. 2307 as the withholding tax statement, RR No. 2-98 does not specifically prohibit a taxpayer from introducing evidence other than the said prescribed form to support its claim for refund; that it has substantially complied with the statutory and administrative requirements for entitlement to refund/issuance of TCC; and, that to deny the tax refund/issuance of TCC on the basis of the wrong use of administrative forms, even when the records and payments were verified by the ICPA, would in effect be penalizing the taxpayer for its faithful submission and compliance with the State's tax regulations.

Lastly, PBCom argues that the Court in Division erred in finding that only the amount of ₱14,387,759.86 has been declared in its General Ledger (GL) and Annual ITR for CY 2009 when the ICPA was able to verify that the transactions and the corresponding tax payments were included in its GL and Annual ITR.

On the other hand, in her Petition, the CIR claims that PBCom's bare assertion that it suffered a net loss is merely self-serving and not supported by any corroborative evidence; that there is a need to determine the net loss to ascertain whether PBCom has excess/unutilized creditable withholding tax; that PBCom's claim for tax refund is tainted with procedural infirmity for failure to submit complete documents in support of its administrative claim for refund; that PBCom violated the doctrine of exhaustion of administrative remedies; thus, rendering its resort to the court premature; that to allow taxpayers to file their claims for refund without any substantiation at the administrative level will be creating a dangerous precedent; and that tax refunds are regarded as tax exemptions and are to be construed in *strictissimi juris* against the person or entity claiming the exemption.

RULING OF THE COURT *EN BANC*

In the assailed Decision, the Court in Division ruled that a taxpayer must satisfy the following requisites to be entitled to a refund of excess CWTs:

1. The claim for refund must be filed within two-year prescriptive period as provided under Sections 204(C) and 229 of the NIRC of 1997, as amended;

2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and,

3. The income upon which the taxes were withheld must be included in the return of the recipient.

In its Petition for Review, PBCom *in esse* questions the denial of its claim for refund claiming that while it has not presented BIR Form No. 2307, it submitted other evidence, like BIR Forms 1706 and 1606 to support its claim for refund.

In *Philippine National Bank vs. Commissioner of Internal Revenue,*[29] the Supreme Court noted that BIR Form No. 1606 contains the "very same key information that would be obtained from BIR Form No. 2307" which suffices to prove the fact of withholding, *viz:*

> "In claims for excess and unutilized creditable withholding tax, the submission of BIR Forms 2307 is to prove the fact of withholding of the excess creditable withholding tax being claimed for refund. This is clear in the provision of Section 58.3, RR 2-98, as amended, and in various rulings of the Court. In the words of Section 2.58.3, RR 2-98, 'That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.'"

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[29] G.R. No. 206019, March 18, 2015.

Hence, the probative value of BIR Form 2307, which is basically a statement showing the amount paid for the subject transaction and the amount of tax withheld therefrom, is to establish only the fact of withholding of the claimed creditable withholding tax. There is nothing in BIR Form No. 2307 which would establish either utilization or non-utilization, as the case may be, of the creditable withholding tax.

It must be noted that PNB had already presented the Withholding Tax Remittance Returns (BIR Form No. 1606) relevant to the transaction. The said forms show that the amount of ₱74,400,028.49 was withheld and paid by PNB in the year 2003. It contains, among other data, the name of the payor and the payee, the description of the property subject of the transaction, and the determination of the taxable base, and the tax rate applied. These are the very same key information that would be gathered from BIR Form No. 2307.

While perhaps it may be necessary to prove that the taxpayer did not use the claimed creditable withholding tax to pay for his/its tax liabilities, there is no basis in law or jurisprudence to say that **BIR Form No. 2307 is the only evidence that may be adduced to prove such non-use**." (Emphases supplied)

In other words, BIR Form No. 2307's probative value is to establish only the fact of withholding of the claimed CWT. Considering that BIR Form No. 1606 contains the same key information that could be gathered from BIR Form No. 2307, it necessarily follows that BIR Form No. 1606 can likewise prove the fact of withholding.

Moreover, BIR Form No. 1606 is a withholding tax remittance return required by law to be filed by the buyer in triplicate copies as a requirement for the transfer of title to the buyer. The form supports the certification (BIR Form No. 2307) issued by the withholding agent/buyer attesting to the fact of withholding.

In the case at bar, records[30] show that PBCom presented several BIR Form No. 1606 to prove the fact of withholding on its sales of real and other properties acquired (ROPA), the breakdown of which is as follows:

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[30] Exhibit "S", pp. 3-6.

	Findings	Annex Reference	Supporting BIR Returns	Amount of Creditable Withholding Tax
A. Creditable withholding tax payments duly supported by original BIR Forms 1606 and 1706				
	Sale of Property			
1	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank	A1-1	1606	₱ 21,973,448.70
2	Creditable withholding tax payment supported by original BIR Form 1606 with no stamped "received" by the bank but with reference to check details and supported by BIR Certification confirming the remittance	A1-2	1606	186,000.00
3	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank with erasure in the amount but with countersignature	A1-3	1606	8,100.00
Sub-total				**₱ 22,167,548.70**
B. **Other Findings**				
	Sale of Property			
1	Creditable withholding tax payment supported by original BIR Form 1606 dated 25 November 2005 but stamped "received" by the bank on 6 February 2009 and with erasure on tax base but supported by BIR certification confirming the date of remittance on 6 February 2009 and with countersignature on tax base and the amount could be validated through re-computation	A1-4	1606	₱ 1,170,000.00
2	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank on 5 March 2009 but no date was indicated in the return	A1-5	1606	9,000.00
3	Creditable withholding tax payment supported by original BIR Form 1706 stamped "received" by the bank	A1-6	1706	1,597,080.00
4	Creditable withholding tax payment supported by photocopy of BIR Form 1606 stamped "received" by the bank	A1-7	1606	166,632.00
5	Creditable withholding tax payment supported by photocopy of BIR Form 1606 with no stamped "received" by the bank	A1-8	1606	144,000.00
Sub-total				**₱ 3,086,712.00**
Total				**₱ 25,254,260.70**

The income payments, upon which the creditable withholding taxes of ₱25,254,260.70 were withheld, amount to ₱646,836,345.00,[31] as shown below:

	Findings	Annex Reference	Income Payments	Amount of Creditable Withholding Tax
A. Creditable withholding tax payments where the related income are included in the Company's General Ledger				
	Sale of Property			
1	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank; the related income of which is supported by original deed of absolute sale and/or contract to sell, photocopy of sales offering ticket and original accounting ticket, and traced to GL	B1-1	₱ 96,920,945.00	₱ 5,815,256.70
2	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank; the related income of which is supported by original deed of absolute sale and/or contract to sell and accounting ticket, and traced to GL	B1-2	454,585,250.00	13,719,195.00
3	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank; the related income of which is supported by photocopy of deed of absolute sale, photocopy of sales offering ticket, original accounting ticket, and traced to GL	B1-3	11,120,000.00	667,200.00
4	Creditable withholding tax payment supported by original BIR Form 1606 not stamped "received" by the bank but with reference to check details and supported by BIR Certification confirming the remittance; the related income of which is supported by original deed of absolute sale, photocopy of sales offering ticket and original accounting ticket, and traced to GL	B1-4	3,100,000.00	186,000.00

[31] Exhibit 'S", pp. 11-19.

5	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank and with erasure in the amount but with countersignature; the related income of which is supported by photocopy of deed of absolute sale and sales offering ticket, original accounting ticket, and traced to GL	B1-5	135,000.00	8,100.00
Sub-total			**₱ 565,861,195.00**	**₱ 20,395,751.70**
B. **Other Findings**				
	Sale of Property			
1	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank; the related income of which is supported by original deed of absolute sale and photocopy of sales offering ticket	B1-6	₱ 13,269,950.00	₱ 796,197.00
2	Creditable withholding tax payment supported by original BIR Form 1606 stamped"received" by the bank; the related income of which is supported by original deed of absolute sale	B1-7	16,260,000.00	975,600.00
3	Creditable withholding tax payment supported by original BIR Form 1606 dated 25 November 2005 but stamped "received" by the bank on 6 February 2009 and with erasure on tax base but supported by BIR Certification confirming the date of remittance on 6 February 2009 and with countersignature on the tax base and the amount could be validated through re-computation; the related income of which is supported by original deed of absolute sale, contract to sell, sales offering ticket, accounting ticket and partially supported by tape receipt and traced to GL	B1-8 B1-8A	19,500,000.00	1,170,000.00
4	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank on 5 March 2009 but no date was indicated in the return	A1-5	150,000.00	9,000.00
5	Creditable withholding tax payment supported by original BIR Form 1706 stamped "received" by the bank	A1-6	26,618,000.00	1,597,080.00
6	Creditable withholding tax payment supported by photocopy of BIR Form 1606 stamped "received" by the bank	A1-7	2,777,200.00	166,632.00

7	Creditable withholding tax payment supported by photocopy of BIR Form 1606 not stamped "received" by the bank	A1-8	2,400,000.00	144,000.00
Sub-total			**₱ 80,975,150.00**	**₱ 4,858,509.00**
Total			**₱ 646,836,345.00**	**₱ 25,254,260.70**

Based on the foregoing and in compliance with the second and third requisites, this Court finds that only the income payments of ₱565,861,195.00 related to the creditable withholding taxes of ₱20,395,751.70 were duly supported by BIR Form No.1606 and were clearly declared in petitioner's GL and Annual ITR for calendar year 2009, *viz*:

	Findings	**Annex Reference**	**Income Payments**	**Amount of Creditable Withholding Tax**
A. Creditable withholding tax payments where the related income are included in the Company's General Ledger				
	Sale of Property			
1	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank; the related income of which is supported by original deed of absolute sale and/or contract to sell, photocopy of sales offering ticket and original accounting ticket, and traced to GL	B1-1	₱ 96,920,945.00	₱ 5,815,256.70
2	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank; the related income of which is supported by original deed of absolute sale and/or contract to sell and accounting ticket, and traced to GL	B1-2	454,585,250.00	13,719,195.00
3	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank; the related income of which is supported by photocopy of deed of absolute sale, photocopy of sales offering ticket, original accounting ticket, and traced to GL	B1-3	11,120,000.00	667,200.00

4	Creditable withholding tax payment supported by original BIR Form 1606 not stamped "received" by the bank but with reference to check details and supported by BIR Certification confirming the remittance; the related income of which is supported by original deed of absolute sale, photocopy of sales offering ticket and original accounting ticket, and traced to GL	B1-4	3,100,000.00	186,000.00
5	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank and with erasure in the amount but with countersignature; the related income of which is supported by photocopy of deed of absolute sale and sales offering ticket, original accounting ticket, and traced to GL	B1-5	135,000.00	8,100.00
Total			**₱ 565,861,195.00**	**₱ 20,395,751.70**

For all the foregoing, this Court affirms the findings of the Court in Division that PBCom has sufficiently complied with the requirements for refund of unutilized CWT in the amount of ₱14,387,759.96, and further grant the additional amount of ₱20,395,751.70, or the total amount of ₱34,783,511.66.

WHEREFORE, foregoing premises considered:

1) the Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA EB No. 1199, is hereby **DENIED** for lack of merit; and,

2) the Petition for Review filed by Philippine Bank of Communications, docketed as CTA EB No. 1194, is hereby PARTIALLY GRANTED. Accordingly, the Commissioner of Internal Revenue is ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of Philippine Bank of Communications in the amount of THIRTY FOUR MILLION SEVEN HUNDRED EIGHTY THREE THOUSAND FIVE HUNDRED ELEVEN

PESOS and 66/100 (₱34,783,511.66), representing its unutilized and excess creditable withholding taxes for calendar year 2009.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusion in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice