REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

GREAT LANDHO, INC. TT&T DEVELOPMENT, INC., and TAMA PROPERTIES INC.,
Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10184**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 25 2024 2:15 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. "Motion for Partial Reconsideration (Re: [Decision] dated 04 August 2023)"[1] (**petitioners' MPR**) of the Court's Decision dated 04 August 2023[2] (**assailed Decision**) filed by petitioners Great Landho, Inc., TT&T Development, Inc. and Tama Properties, Inc. (**petitioners/GLI, TDI and TPI**) on 29 August 2023, with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Comment and Opposition (Re: Motion for Partial Reconsideration dated 29 August 2023)"[3] (**respondent's Comment and Opposition**) filed on 30 August 2023; and,

1 Division Docket, Volume II, pp. 809-820.
2 Id., pp. 779-808.
3 Id., pp. 831-839.

2. "Motion for Partial Reconsideration (Re: Decision promulgated on 04 August 2023)"[4] (**respondent's MPR**) filed by respondent on 29 August 2023, with petitioners' "Comment and Opposition (to the Respondent's Motion for [Partial] Reconsideration dated 29 August 2023)"[5] (**petitioners' Comment and Opposition**) filed on 14 September 2023.

In their MPR[6], petitioners ask this Court to reconsider the denial of and instead grant their refund claim representing the erroneous documentary stamp tax (**DST**) payments, in the aggregate amount of **₱3,519,033.60**, pertaining to the sale or transfer of parcels of land entered between petitioner GLI, as buyer, and petitioners TDI and TPI, as sellers. To bolster their claim, petitioners forward the following arguments:

1. The judicial claim for refund of erroneously paid DST has not yet prescribed since the Bureau of Internal Revenue (**BIR**) has not acted on petitioner GLI's Letter for Reconsideration dated 07 March 2019[7] (**Request for Reconsideration**), asking Revenue District Officer, Erlinda V. Victorino (**RDO Victorino**), thereby constraining herein petitioners to file the instant Petition for Review[8] on 10 October 2019 allegedly well within the two (2)-year prescriptive period;

2. RDO Victorino's Letter dated 22 January 2019[9], denying their applications for refund of erroneously paid DST (**First Denial Letter**) cannot be treated as respondent's decision that may be appealed to the Court of Tax Appeals (**CTA**) since what is contemplated by Section 11 of Republic Act (RA) No. 1125, as amended, and Section 229[10] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, is a denial issued by the CIR himself or herself and not merely by an RDO;

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4 Id., pp. 821-829.
5 Id., pp. 843-851.
6 Supra at note 1.
7 Exhibit "P-56", Division Docket, Volume II, pp. 666-667.
8 Id., Volume I, pp. 6-151, with annexes.
9 Exhibit "P-55", id., Volume II, p. 665.
10 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.*

3. Since the sale or transfer of the parcels of land was mutually rescinded, the taxable transactions supposedly subject to DST no longer exist, eliminating the corresponding liability to pay DST;

4. In cases falling under Section 196[11] of the NIRC of 1997, as amended, the nature and character of the transaction should also be considered such that the imposition of DST attaches to the actual conveyance of the property and not the instrument itself; and,

5. Assuming *arguendo* that DST applies to the instrument and not the conveyance itself, they are still not liable for DST because such tax cannot attach to a document that is considered void from its inception in consequence of the mutual rescission of the Deeds of Absolute Sale.[12]

In his or her Comment and Opposition[13], respondent maintains that petitioners failed to prove that they are entitled to a refund of alleged erroneously paid DST arising from the cancellation or revocation of the Deeds of Absolute Sale. Contrary to petitioners' contention, the DST imposed on the Deeds of Absolute were not erroneously nor illegally collected as such tax was imposed when petitioners sold and purchased the parcels of land among each other.

Respondent reasserts that, as held in *Philippine Home Assurance Corporation, et al. v. Court of Appeals and Commissioner of Internal Revenue*[14] (**Philippine Home Assurance**), DST is a tax not upon the business transacted but is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business; hence, it must be paid upon the issuance of the specific instrument (such as a Deed of Absolute Sale), without regard to whether the contract which gave rise thereto is rescissible, void, voidable, or unenforceable.

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[11] **SEC. 196.** *Stamp Tax on Deeds of Sale and Conveyances of Real Property.*

[12] Exhibits "P-10" and "P-11", Division Docket, Volume II, pp. 572-577 and 578-581, respectively.

[13] Supra at note 3.

[14] G.R. No. 119446, 21 January 1999.

Additionally, respondent once again asserts that rescission of the subject contracts of sale cannot occur because none of the grounds outlined in Article 1381[15] of the Civil Code of the Philippines are present in the instant case. Instead, what transpired was a revocation of the sale. Consequently, since there is no rescission but rather a revocation of the sale, the subject contracts of sale remain perfectly valid, each possessing all the essential requisites for validity, *i.e.*, consent, object and cause. Respondent further notes that, in the event of restitution involving the return of the purchase price and the property, this would constitute a new transaction subject to DST.

On the other hand, in his or her MPR[16], respondent asks for the reconsideration of the assailed Decision[17] on the ground that the Court erred in granting petitioners' refund claim representing alleged erroneously paid capital gains tax (**CGT**) payments arising from the cancellation or revocation of the Deeds of Absolute Sale[18]. Similar to his or her argument with respect to DST, respondent argues that the CGT imposed on the Deeds of Absolute were not erroneously nor illegally collected as such tax was imposed when petitioners sold and purchased the parcels of land among each other.

Using the same argument to justify the imposition of DST, respondent asserts that, since the subject contracts of sale remain perfectly valid, petitioner's contention that there is no transaction giving rise to liability for CGT is without merit. Respondent also emphasizes that, in the event of restitution involving the return of the purchase price and the property, this would constitute a new transaction, which would also be subject to CGT.

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15 ARTICLE 1381. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission.

16 Supra at note 4.

17 Supra at note 2.

18 Exhibits "P-10" and "P-11", supra at note 12.

As a final point, respondent contends that tax refunds are strictly construed against the taxpayer and in favor of the government. Therefore, it is the burden of petitioners to prove their entitlement to a refund, and any well-founded doubt is fatal to such a claim.

In their Comment and Opposition[19], petitioners insist that they have sufficiently established and proved their entitlement to a refund of the erroneously paid CGT in relation to the Deeds of Absolute Sale[20], which were subsequently mutually rescinded.

Petitioners echo this Court's ruling that the remedy of rescission in cases falling under Article 1381[21] of the Civil Code of the Philippines should not be confused with the remedy or action for rescission under Article 1191[22] of the Civil Code of the Philippines, which may either be done by mutual consent of the contracting parties or by filing a complaint for rescission before the court.

Using the **definition of the remedy of rescission**, *i.e.*, the unmaking of a contract, or its undoing from the beginning, and not merely its termination, as in held in case of *Pryce Corporation (formerly Pryce Properties Corporation) v. Philippine Amusement and Gaming Corporation*[23], and considering Revenue Memorandum Circular (**RMC**) No. 35-2017[24], which states that there must be **presumed gain** from the sale, exchange or disposition of the real property and **transfer of ownership** before the 6% CGT can be applied, petitioners argue that the subject contracts of sale should be considered rescinded. As a result, the parties (herein petitioners) would be restored to their previous positions prior to the subject transactions. Accordingly, the obligation

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19 Supra at note 5.

20 Exhibits "P-10" and "P-11", supra at note 12.

21 Supra note 15.

22 ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

23 G.R. No. 157480, 06 May 2005.

24 *Clarification on the Imposition of Capital Gains Tax on Sale, Exchange or Other Disposition of Real Properties.*

to pay CGT no longer exists, and the tax payments made by reason of the conveyances must be returned to the parties in accordance with the principle of *solutio indebiti*.

Petitioners also submit that respondent is already estopped from claiming that they are not entitled to the refund of erroneously paid CGT since respondent already granted the same in favor of petitioner TPI in the amount of ₱1,715,712.00.

Lastly, petitioners contend that tax refunds should not be strictly construed against the taxpayer when such an interpretation goes against substantial justice, equity and fair play, and results in the unjust enrichment of the government. Citing *Commissioner of Internal Revenue v. Lucio L. Co, et al.*[25], petitioners emphasize that applying the strict construction rule against them, despite having sufficiently proved their entitlement to a refund of the erroneously paid CGT, would contravene the principles of substantial justice, equity and fair play, and would lead to unjust enrichment on the part of the government.

We resolve.

After due consideration of the parties' arguments, this Court finds both petitioner's MPR[26] and respondent's MPR[27] bereft of merit.

A careful perusal of the parties respective MPRs readily reveals that it mostly contains a mere rehash or reiteration of the issues and arguments raised in the parties' pleadings, which the Court already considered, passed upon and exhaustively discussed in the assailed Decision[28]. There were no substantial arguments raised in the MPRs that would warrant this Court's reconsideration. Nevertheless, and if only to put the parties' minds to rest, We will discuss *anew* the salient points upon which the conclusions of this Court were anchored.

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25 G.R. No. 241424, 26 February 2020.
26 Supra at note 1.
27 Supra at note 4.
28 Supra at note 2.

Petitioners' MPR

PETITIONER GREAT LANDHO, INC.'S (GLI'S) CLAIMS FOR REFUND OF ERRONEOUSLY PAID DOCUMENTARY STAMP TAX (DST) HAVE ALREADY PRESCRIBED.

As explained in the assailed Decision[29], since petitioner GLI received RDO Victorino's First Denial Letter[30] on 29 January 2019, it had thirty (30) days therefrom, or until 28 February 2019, within which to file a judicial claim before this Court. However, considering that the instant Petition for Review[31] was filed only on 10 October 2019, petitioner GLI's claims for refund of erroneously paid DST have already prescribed.

We do not find merit in petitioners' insistence that RDO Victorino's First Denial Letter cannot be treated as respondent's decision that may be appealed to this Court on the ground that petitioner GLI had a pending Request for Reconsideration[32] and that the denial must be issued by the CIR himself or herself and not merely by an RDO.

It must be emphasized that regarding petitioners' assertion that petitioner GLI had a pending Request for Reconsideration[33], petitioners missed a crucial distinction — the Request for Reconsideration is pending *not* before the Office of the CIR (**OCIR**), but rather before RDO Victorino. This explains why it was RDO Victorino who issued the Letter dated 20 February 2020[34] (**Second Denial Letter**), in which she denied such Request for Reconsideration (as testified to by petitioners' witness, Marjorie Jane D. Ng [**Ng**]). Notably, petitioner GLI received this Second Denial Letter only after petitioners had already filed the present judicial claim for refund.

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29 Supra at note 2.
30 Exhibit "P-55", supra at note 9.
31 Supra at note 8.
32 Exhibit "P-56", supra at note 7.
33 Exhibit "P-56", supra at note 7.
34 See Q&A Nos. 41-42, Judicial Affidavit of Marjorie Jane D. Ng dated 24 June 2020, Exhibit "P-59", Division Docket, Volume I, pp. 391-392.

We reiterate, for emphasis, that it is well-settled in our jurisprudence that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204[35] and 229[36] of the NIRC of 1997, as amended:

(1) The taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;[37]

(2) **If the administrative claim for refund is denied** or not acted upon **within said two (2)-year period, the judicial claim for refund must be filed with the CTA within 30 days from receipt of the denial <u>AND</u> within the said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed**;[38] and,

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35 **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

...

(c) Credit or refund taxes **<u>erroneously</u>** or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing <u>with the Commissioner</u> a claim for credit or refund <u>within two (2) years after the payment of the tax or penalty</u>**: *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis and underscoring supplied)

36 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis and underscoring supplied)

37 See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

38 See *Allison J. Gibbs, et al. v. Collector of Internal Revenue, et al.*, G.R. No. L-13453, 29 February 1960.

(3) The claim for refund must be a categorical demand for reimbursement.[39]

As regards the ***second requirement***, in *Allison J. Gibbs and Esther K. Gibbs v. Collector of Internal Revenue and Court of Tax Appeals*[40] (**Gibbs**), the Supreme Court ruled that a decision appealable to this Court, in connection with erroneously or illegally paid taxes, need not necessarily originate from the CIR himself or herself, *viz*:

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> Appellants, in their supplemental brief, urge two additional grounds for the revocation of respondent court's decision. It is claimed that **since the letter-decision dated October 26, 1956 denying their request for refund of the deficiency income tax paid by them, was signed not by the Collector, but merely by the Deputy Collector of Internal Revenue, it could not be considered as a final decision on their said request.** ...
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> ...
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> **Appellants contend that under the above-quoted provisions, only the Collector has the authority to deal in refund cases.** This is fallacious. In the first place, the cited provisions refer to the authority of the Collector of Internal Revenue to *compromise*, or to *credit* or *refund* taxes erroneously or illegally received, that is, when the action, in a manner of speaking, is against the Government. In such case, the authority is vested exclusively in the Collector himself. The purpose is to assure that no improper compromise, credit, or refund, is made to the prejudice of the Government. **But in the case before us, the action taken by the Deputy Collector in his letter of October 26, 1956, was precisely to deny the request for refund** and demand the payment of the deficiency tax from petitioners. **Certainly, this is well within the authority of the Deputy Collector and is final and binding unless revoked by the Collector.**
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> ...

In this case, since petitioner GLI merely filed a Request for Reconsideration[41] before RDO Victorino, it did not invoke respondent's authority to revoke the denial action taken by RDO Victorino, nor did it question the authority of RDO Victorino or the final and binding

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[39] *Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado*, G.R. No. 154068, 03 August 2007.

[40] Supra at note 38; Italics in the original text and emphasis supplied.

[41] Exhibit "P-56", supra at note 7.

nature of such denial. Therefore, following the precedent set in *Gibbs*, RDO Victorino's First Denial Letter[42] is the decision appealable to this Court.

Clearly, by choosing to file a Request for Reconsideration[43] with RDO Victorino instead of appealing to this Court directly after receiving RDO Victorino's First Denial Letter[44] on 29 January 2019, petitioner GLI risked allowing the 30-day appeal period to lapse on 28 February 2019. This is exactly what occurred in this case, as the present petition[45] was filed much later, *i.e.*, on 10 October 2019.

Accordingly, this Court stands by its ruling that petitioner GLI's claims for refund of erroneously paid DST have already prescribed.

PETITIONER GREAT LANDHO, INC. (GLI) IS *NOT* ENTITLED TO THE REFUND OF ITS DOCUMENTARY STAMP TAX (DST) PAYMENTS.

Again, even assuming *arguendo* that petitioner GLI's claims for refund of erroneously paid DST have not prescribed, the same would still fail as the subsequent mutual rescission or cancellation[46] of the sale transactions did not operate to cancel the DST liability due on the duly executed Deeds of Absolute Sale[47] embodying the transfer of real properties (purchased by petitioner GLI from petitioners TDI and TPI).

In the case of *Philippine Home Assurance*[48] the Supreme Court held that DST must be paid upon the issuance of the instrument evidencing the transfer or conveyance of real property, without regard to whether the contract that gave rise to it is rescissible, void, voidable, or unenforceable, to wit:

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42 Exhibit "P-55", supra at note 9.
43 Exhibit "P-56", supra at note 7.
44 Exhibit "P-55", supra at note 9.
45 Supra at note 8.
46 Exhibits "P-23" and "P-24", Division Docket, Volume II, pp. 595-601 and 602-607, respectively.
47 Exhibits "P-10" and "P-11", supra at note 12.
48 Supra at note 14; Citations omitted, italics in the original text, emphasis and underscoring supplied.

> ...
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> In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges and trusts, and conveyances of real property.
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> **Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto**. The documentary stamp taxes must be paid upon the issuance of the said instruments, without regard to **whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable**. As the Supreme Court of the United States held in *Du Pont v. United States*:
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> The tax is not upon the business transacted but is **an exercise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business.** It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. **In this view it is immaterial whether the transfer of the account constituted a sale.**
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> ...

Based on the foregoing, it is clear that a DST is lawfully levied regardless of whether the subject conveyance or transfer of real property is defective or null and void. Thus, the subsequent mutual rescission or cancellation[49] of the Deeds of Absolute Sale[50] is of no consequence and has no bearing whatsoever in the payment of the DST accruing from such conveyance or transfer. Such being the case, the refund of petitioner GLI's DST payments[51] on the transfer or conveyance of the properties of petitioners TDI and TPI is not warranted.

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[49] Exhibits "P-23" and "P-24", supra at note 46.
[50] Exhibits "P-10" and "P-11", supra at note 12.
[51] Exhibits "P-19" (BIR Form No. 2000-OT) and "P-21" (BIR Form No. 2000-OT), Division Docket, Volume II, pp. 590 and 592-593, respectively.

Respondent's MPR

PETITIONER TT&T DEVELOPMENT, INC. (TDI) IS ENTITLED TO THE REFUND OF ERRONEOUSLY PAID CAPITAL GAINS TAX (CGT).

This Court finds no merit in respondent's contention that the CGT payments on the sale transactions covered by the Deeds of Absolute Sale[52] were not erroneously nor illegally collected. Respondent's claim rests on the premise that the CGT was applicable at the time petitioners sold and purchased the parcels of land among themselves, during which the contracts of sale were perfectly valid.

It bears stressing that a CGT is imposed only on the presumed gain realized from the sale of real properties located in the Philippines and classified as capital assets.[53] This implies that in order to be liable for payment of the CGT, one has to profit or gain from the sale, exchange or disposition of the real property. In other words, in the absence of income from or the absence of sale, disposition or conveyance of real property, the imposition of the CGT does not arise.

Accordingly, this Court reaffirms its previous ruling that since petitioners GLI and TDI mutually agreed to rescind[54] the Deed of Absolute Sale[55], the sale transaction was not consummated and thus, no actual conveyance or transfer of real properties was made between them. As a result, petitioner TDI did not generate any income from this transaction that would be the proper subject of the CGT.

In fine, this Court finds no cogent reason to reverse or modify the assailed Decision[56] partially granting petitioners' Petition for Review, and ordering respondent to refund in favor of petitioner TDI in the total amount of **₱12,360,422.40**, representing the erroneously paid CGT,

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52 Exhibits "P-10" and "P-11", supra at note 12.
53 *SMI-ED Phil. Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, 12 November 2014.
54 Exhibit "P-23", supra at note 46.
55 Exhibits "P-10" and "P-11", supra at note 12.
56 Supra at note 2.

WHEREFORE, premises considered, both petitioners' Motion for Partial Reconsideration (Re: [Decision] dated 04 August 2023)" filed on 29 August 2023 and respondent's "Motion for Partial Reconsideration (Re: Decision promulgated on 04 August 2023)" filed on 29 August 2023 are hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice