REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

HERMANO (SAN) MIGUEL FEBRES CORDERO MEDICAL EDUCATION FOUNDATION (DE LA SALLE - HEALTH SCIENCES INSTITUTE), INC., herein represented by BR. AUGUSTINE BOQUER, FSC and DR. ALVIN CRUDO, Petitioner,	**CTA EB CASE NO. 908** (CTA Case No. 8194)
- *versus* -	Present: *Del Rosario, P.J. Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 12 2013 9:05 a.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed on June 20, 2012, pursuant to Section 4 of Rule 8 of the Revised Rules of the Court of Tax Appeals,[2] assailing the Amended Decision dated May 15, 2012,[3]

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[1] *Rollo*, CTA EB Case No. 908 (CTA Case No. 8194), pp. 37-115, with Annexes.

[2] RULE 8

PROCEDURE IN CIVIL CASES

xxx xxx xxx

SEC. 4. *Where to appeal; mode of appeal.* –

xxx xxx xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

[3] Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Lovell R. Bautista and Olga Palanca-Enriquez, concurring; *Rollo*, pp. 57-70, *Annex "A."*

rendered by the then Third Division of the Court ("Court in Division"), which modified the Decision dated January 9, 2012;[4] and accordingly, praying for the cancellation and setting aside of the Final Assessment Notice and Assessment Notice No. F-054-LNTF-06-VT-007 dated January 19, 2010.

The Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated January 9, 2012, as follows:

> Petitioner Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle - Health Sciences Institute), Inc. is a non-stock, non-profit medical and educational institution engaged in health sciences, with principal office address at Congressional Avenue, Dasmariñas, Cavite. It has a pharmacy that purchases medicines that are used by its in-patients during medical procedures or sold to out-patients.
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> Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) appointed and empowered to perform the duties of her office including, among others, the duty to act on protest of tax assessments as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
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> On December 23, 2009, petitioner received a copy of a Preliminary Assessment Notice (PAN) from respondent stating that it is liable for deficiency VAT in the amount of ₱2,546,106.34.
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> Alleging that respondent failed to take into consideration that its sales of pharmacy items to its in-patients are exempt from VAT pursuant to Section 109[(G)] of the National Internal Revenue Code (NIRC) and BIR Ruling No. DA-122-2005 dated April 6, 2005, petitioner submitted to respondent its protest against the PAN on January 7, 2010.
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> On February 2, 2010, petitioner received a copy of the Final Assessment Notice (FAN) and BIR Form No. 1708, both dated

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[4] *Ibid.*, pp. 72-82; *Annex "B."*

January 19, 2010, stating that it is liable for deficiency VAT in the amount of ₱2,607,933.07.

On March 4, 2010, respondent received petitioner's protest against the FAN. In the said protest, petitioner moved that the findings stated in the FAN should be reversed and set aside on the following grounds; namely: (a) the FAN and BIR Form No. 1708 are void for failure to comply with Section 228 of the NIRC and Section 3.1.4 of Revenue Regulations (RR) No. 12-99; and (b) the alleged deficiency VAT is being assessed against the sales of pharmacy items for in-patients and/or special units which are necessarily included in the term "hospital services" that are exempt from VAT under Section 109[(G)] of the NIRC and BIR Ruling No. DA-112-2005 dated April 6, 2005. On April 30, 2010, petitioner, through registered mail, submitted its supporting documents in support of its protest.

Alleging inaction on the part of respondent within the period of one hundred eighty (180) days from the submission of the complete documents, petitioner filed this Petition for Review on November 26, 2010.

In her Answer, respondent alleged the following Special and Affirmative Defenses:

> "4. Contrary to the claims of petitioner, the subject Final Assessment Notice (FAN) and Assessment Notice with Demand No. F-054-LNTF-06-VT-007 are valid. The complete details as required by law were attached as *Annex 'A'* as Details of Discrepancy of the FAN and such is repleaded herein.
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> 5. The statements contained in *Annex 'A'* are the factual verifications which resulted in the assessment and the discovery of fraud. It also contains the legal basis for such assessments.
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> 6. The Details of Discrepancy is adequate enough to inform the legal and factual bases of the assessments. Petitioner was properly informed of the findings of the Revenue Officers. The belief of inadequate information

> on the basis and facts gives petitioner an option to file an administrative protest.
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> 7. Contrary to petitioner's claim that they are exempt from VAT by citing BIR Ruling No. DA-122-2005, it should be noted that the aforementioned ruling was issued to Preferential Services, Inc. /Medical City Hospital and not petitioner. Petitioner is not exempt from VAT as the BIR Ruling is only for the applicant who has submitted the proper documents for the BIR to fully thresh out the details whether the applicant is truly deserving of such exemption.
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> 8. The statements comparing petitioner with Preferential Services, Inc. /Medical City Hospital in providing medical and hospital services is merely self-serving and should not be given any weight.
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> 9. Finally, it is well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

During trial, petitioner presented Arlene C. Lacorte as its witness, and Exhibits *"A"* to *"S"* and *"U"* to *"W,"* inclusive of their sub-markings, as its documentary evidence. All these pieces of evidence were admitted by this Court in the Resolution dated June 28, 2011.

Upon manifestation of respondent that she will no longer present any evidence, both parties were required to submit their respective memorandum.

On September 6, 2011, this case was submitted for decision upon the filing of respondent's Memorandum on August 25, 2011 and petitioner's Memorandum on August 31, 2011.[5]

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[5] *Ibid.*, pp. 73-76.

The Ruling of the Court in Division

The Court in Division issued a Decision dated January 9, 2012, ruling as follows:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice and the Assessment Notice No. F-054-LNTF-06-VT-007 dated January 19, 2010 is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**[6]

Aggrieved, respondent filed a Motion for Reconsideration on January 27, 2012; the Court finding merit thereto, promulgated an Amended Decision dated May 15, 2012, which reads:

> **WHEREFORE,** finding merit in respondent's Motion for Reconsideration, the same is hereby **GRANTED**. Accordingly, the Decision dated January 9, 2012 is hereby **MODIFIED** with respect to the issue on sale of drugs or pharmaceutical items by petitioner. Petitioner Hermano (San) Miguel Febres Cordero Medical Education Foundation is hereby **ORDERED** to **PAY** respondent Commissioner of Internal Revenue the amount of TWO MILLION SIX HUNDRED SEVEN THOUSAND NINE HUNDRED THIRTY THREE AND 07/100 (₱2,607,933.07) representing deficiency value added tax for taxable year 2006, and the 20% deficiency interest per annum from the date prescribed for its payment until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended.
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> **SO ORDERED.**[7]

The Issues

Hence, the present Petition for Review, where petitioner assigns the following issues of:

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[6] *Ibid.*, p. 83.
[7] *Ibid.*, p. 69.

I. WHETHER OR NOT THE [THEN] THIRD DIVISION ERRED IN TAKING COGNIZANCE OF AN ISSUE NOT RAISED IN THE PLEADINGS OR DURING TRIAL; and

II. WHETHER OR NOT THE THIRD DIVISION ERRED IN RULING THAT THE FAN AND ASSESSMENT NOTICE IS VALID.[8]

Petitioner's Arguments

Petitioner claims that evidence on record supports that it operates a hospital. It further asserts that the said issue was never raised, nor disputed by respondent in her Answer dated January 17, 2011, Pre-Trial Brief dated January 28, 2011, Memorandum dated August 25, 2011 and even in her Motion for Reconsideration dated January 27, 2012. It then attaches a Certification (*Annex "C"*) to show that De La Salle University Medical Center is owned and operated by petitioner as a "teaching hospital"; and its Audited Financial Statement (*Annex "D"*) to show that the operations of the former is under the control of the latter.

Petitioner also insists that in the Itemized Summary and Comparative Table of value-added tax ("VAT") returns for the year 2006, the same shows that the Net Discrepancy was due to difference in reporting and computation, and due to the inclusion of purchases not subject to VAT, *i.e.*, VAT-exempt. It further posits that since respondent did not assail the Net Discrepancy, she has the duty to establish that her assessment is correct.

Respondent's Counter-Arguments

Respondent counters that petitioner failed to prove that it operates a hospital, and that even *in arguendo* that it operates one, it failed to substantiate its claim. She argues as well that petitioner cannot be exempt from VAT by merely relying on BIR Ruling DA-122-2005, for the said ruling was issued to Preferential Services, Inc.,/Medical City Hospital, and not to petitioner.

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[8] *Ibid.*, p. 43.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

It is a basic tenet that once a Court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law.[9] Indeed, the interest of justice dictates that the Court considers and resolves issues even though not particularly raised if it is necessary for the complete adjudication of the rights and obligations of the parties and it falls within the issues already found thereof.[10]

Lest it be forgotten further that tax exemptions are to be construed *strictissimi juris* against the taxpayer.[11]

Thus, the Court cannot simply close its eyes to the fact that petitioner failed to establish that it operates a hospital, and to fully account for the net discrepancy in the VAT assessment. The Court *En Banc* affirms the findings of the Court in Division, to quote:

> *First*, petitioner Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle - Health Institute) failed to establish by competent evidence that it is an entity that **operates a hospital**.
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> The above finding was arrived at after due consideration of the following notable precepts in this jurisdiction:
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> (1) Under Section 109(G) of the NIRC of 1997, as amended, those contemplated to be exempt from VAT are taxpayers engaged in the performance of medical, dental, hospital and veterinary services; and

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[9] Comilang *v.* Burcena, G.R. No. 146853, February 13, 2006, 482 SCRA 342.
[10] Insular life Assurance Co., Ltd., Employees Association - NATU, *v.* Insular Life Assurance Co., Ltd., G.R. No. L-25291, March 10, 1977, 76 SCRA 50.
[11] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008, 546 SCRA 150; citing *Commissioner of Internal Revenue v. Solidbank Corp., G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461.*

(2) In line with the foregoing, it is now well-settled that the sale of drugs or pharmaceutical items to **in-patients <u>of the hospital</u>** is considered part of the term "hospital services" covered by the VAT exemption under Section 109(G) of the 1997 NIRC, as amended. This is so "because the maintenance and **operation of a pharmacy or drugstore <u>by a hospital</u>** is a necessary and essential service or facility rendered by any hospital for its patients"; and also because "unlike the sale of retailing of drugs or medicines by drugstores in general, **the procurement of medicines and pharmaceutical items <u>from the hospital drugstore or pharmacy</u> amounts to the availment of service rendered or made available <u>by the hospital for its in-patients</u>** and not simply the buying of such goods."

Clearly, before a taxpayer may claim that its sale of drugs or pharmaceutical items is classified as "hospital service" exempt from VAT under Section 109(G) of the NIRC of 1997, as amended, the following must be established: (i) that the taxpayer **<u>operates a hospital</u>**; (ii) that the said **<u>hospital has a pharmacy or drugstore</u>**; and (iii) that the sale of drugs – claimed to be exempt from VAT – was made by the said hospital drugstore or pharmacy **<u>to in-patients of the hospital</u>** being operated by the taxpayer.

Now, in this case, since petitioner is claiming that its sale of drugs and pharmacy items to in-patients is part of the term "hospital services" exempt from VAT under Section 109(G) of the NIRC of 1997, as amended, it is essential for the petitioner to first establish that it **operates a hospital**.

Records show that petitioner utterly failed to discharge this duty. No substantial evidence was presented to prove that petitioner actually **operates a hospital** or is engaged in the operation of a hospital as defined under Republic Act No. 4226. Under RA No. 4226, "hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from illness, disease, injury or deformity, or in need of obstetrical or other medical and nursing care (Section 2(a) thereof).

A perusal of petitioner's Articles of Incorporation reveals that, essentially, petitioner is a non-stock, non-profit **educational** corporation, formed to provide institutional medium for financing programs dedicated to the establishment, maintenance, operation and management of educational facility in the field of medical and physical sciences; to organize, conduct and carry on the operation of health science, educational institutions such as Medicine, Dentistry, Nursing, Midwifery, Pharmacy, Physical Medicine and other health and medical sciences; to promote for the scientific development of the institution of medicine; to conduct applied researches and development activities and studies; to function and operate on private science and research foundation; to provide financial support, within the Philippines and abroad for the studies of selected students and for the attendance at scientific influences by qualified and competent scholars; to receive and/or give grants, gifts, legacies, donations, contributions, endowments and financial aids or loans from any source; to establish, maintain and operate medical research centers, technological, vocational and manpower development schools; to establish scholarship and professional chairs in the social, medical and physical sciences; and to do any and all things which may be reasonably necessary for the due carrying on of the purposes of the corporation.

Further, petitioner itself made the representation in its Petition for Review which states that "***Hermano** is a non-stock, non-profit **educational** corporation duly organized and existing under the laws of the Philippines, with principal office address at xxx.*" Likewise, an examination of the Joint Stipulation of Facts and Issues reveals that the parties have not agreed or stipulated on the information that petitioner operates a hospital.

Petitioner alleges that it is engaged in providing medical and hospital services including the operation of a pharmacy in its hospital, however, although its Articles of Incorporation could have implied the operation of a hospital, the records of this case and the evidence offered before this Court does not indicate so. There is nowhere in the records or in the documents formally offered by petitioner from which this Court can at the very least infer the fact that petitioner actually operates a hospital or is engaged in the operation of a hospital as defined under Republic Act No. 4226.

"The offer of evidence is necessary because it is the duty of the court to rest its findings of facts and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such documents is offered, the same is merely a scrap of paper barren of probative value."

Thus, considering that petitioner failed to establish by competent evidence that it **operates a hospital**, its alleged sale of drugs or pharmaceutical items cannot be considered as part of the term "hospital services" exempt from VAT under Section 109(G) of the NIRC of 1997, as amended; thereby making the alleged sale of drugs and pharmaceutical items by petitioner an appropriate subject of the deficiency VAT assessment.

Second, even if petitioner is able to prove that it operates a hospital, the denial of its petition for cancellation of deficiency VAT assessment is still in order, this is because petitioner likewise failed to fully account for and substantiate by competent evidence its stance that the NET discrepancy in the deficiency VAT assessment consists of *[1] sales of pharmacy items to its in-patients and/or special units such as operating and delivery rooms during medical procedures, which are exempt from VAT under Section 109(G) of the NIRC of 1997, as amended; [2] items which are no longer sold or passed on to patients or clients such as equipment and supplies*; and thus, not subject to VAT.

To support its stance, petitioner offered in evidence an Itemized Summary and Comparative Table for its VAT returns for the year 2006, and the Monthly Value-Added Tax Returns for the period of January to December 2006. However, *We* find that the truth in petitioner's stance cannot be verified solely by examining the above-mentioned documents.

The hands of this Court are tied from giving credence to the Itemized Summary and Comparative Table and the Monthly Value-Added Tax Returns in view of the facts that the source documents (*e.g., receipts, invoices, financial statement of income for services to patients, inventory*) where the inputs in the itemized

> summary and tax returns were taken were not offered as evidence for the petitioner; consequently these documents cannot stand to support petitioner's claim.
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> In view of the fact that the records of this case is wanting in competent evidence, the Court cannot verify if there were indeed sales of pharmacy items to in-patients and items not sold to clients; as well as identify the actual portion or amount of the NET discrepancy that pertains to sales of pharmacy items to in-patients and/or special units such as operating and delivery rooms during medical procedures, and the actual portion or amount of the NET discrepancy attributable to items which are no longer sold or passed on to patients or clients such as equipment and supplies.[12]

Clearly, petitioner failed to prove that it operates a hospital, and to fully account for and substantiate the Net Discrepancy in the deficiency VAT assessment.

Nonetheless, petitioner attached, in its Petition for Review, a Certification dated June 19, 2012, signed by President, Br. Augustine Boquer, FSC, and Chairman of the Board, Br. Ricardo Laguda, FSC, stating that De La Salle University Medical Center is owned and operated by Hermano (San) Miguel Febres Cordero Medical Education Foundation, Inc., as a teaching hospital, and that the former has no separate corporate existence, the same being considered as a mere unit or division of the latter;[13] it attached as well an Audited Financial Statement as of May 31, 2006.[14]

It is well-settled that the most competent evidence must be adduced and presented to prove the allegations in a complaint, petition, or protest before a judicial court.[15] It may not be amiss to note further that Section 34 of Rule 132 of the Revised Rules on Evidence is clear that no evidence which has not been formally offered shall be considered. Furthermore, save for the most compelling and cogent reasons,[16] it is too late at this stage

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[12] *Rollo*, pp. 63-68.
[13] *Ibid.*, p. 85; *Annex "C."*
[14] *Ibid.*, pp. 86-115; *Annex "D."*
[15] *Supra*, note 11.
[16] Ramon R. Olbes and Ricardo R. Olbes *v.* China Banking Corporation, G.R. No. 152082, March 10, 2006, 484 SCRA 330, *citing Omandan v. Court of Appeals, G.R. No. 128750, January 18, 2001, 349 SCRA 483.*

to do the same in order to sway the Court *En Banc* to overturn the assailed Amended Decision rendered by the Court in Division.

In addition, the findings of the Court in Division as to the validity of the Final Assessment Notice and Assessment Notice No. F-054-LNTF-06-VT-007 is still binding, to quote:

> Taxpayers must be informed of the facts and the law upon which the assessment is made. Failure to do so shall make the assessment void. Section 228 of the NIRC provides:
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> xxx xxx xxx
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> The reason for the requirement of informing the taxpayer in writing of the facts and law surrounding its assessment is obvious: to ensure that taxpayers are duly appraised of the basis of the tax assessments against them. This is in keeping with the settled doctrine that before a person can be deprived of his property, he should first be informed of the claim against him and the theory on which such claim is premised.
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> The Court agrees with respondent that the "Details of Discrepancies" attached to the FAN sufficiently complied with Section 228 of the NIRC. xxx.
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> xxx xxx xxx
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> Based on the afore-quoted "Details of Discrepancies," the details contained therein showed that the factual basis for assessing petitioner for deficiency VAT was the discrepancy from RELIEF and Third-Party Matching. While the legal basis for assessing the taxpayer were Sections 31, 32, 106 and 108 of the NIRC of 1997, as amended and Revenue Memorandum Order (RMO) No. 32-2007.
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> In a long line of cases, the Supreme Court has ruled that the requirement of the law to inform the taxpayer of the basis of the assessment does not necessarily mean that it be a full narration of the facts and laws on which the assessment is based. The purpose of the assessment is to enable the taxpayer to know the law and

> the facts on which the assessment is made, and to afford him his right to due process once it is served and received. Thus, so long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.
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> In this case, petitioner has intelligently made its protest by stating that its sales of pharmaceutical items in favor of its in-patients are exempt VAT. This circumstance proves that petitioner was sufficiently informed of the facts and the law as to why the assessment has been issued against it. Clearly, petitioner's contention that the assessment issued against it failed to disclose the facts and the law upon which the assessment was based in untenable.[17]

In sum, the Court *En Banc* finds no compelling reason to warrant a reversal of the assailed Amended Decision.

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. The Amended Decision dated May 15, 2012 promulgated by the then Third Division of the Court is hereby **AFFIRMED** *in toto*.

SO ORDERED.

LOVELL R. BAUTISTA
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

[17] *Rollo*, pp. 78-80.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice