REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LOADSTAR INTERNATIONAL SHIPPING, INC., Petitioner,	**CTA EB NO. 2011** (CTA Case No. 9176)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 11 2020 2:25 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Loadstar International Shipping, Inc. (**petitioner/LISI**) seeking to nullify the

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1 Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.
Section 3. *Who may appeal; period to file petition.* —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

First Division's Decision dated 30 July 2018[2] and the Special First Division's Resolution dated 15 January 2019[3], in CTA Case No. 9176, entitled *Loadstar International Shipping, Inc. v. Commissioner of Internal Revenue.*

The antecedent facts follow.

Petitioner LISI is a domestic corporation engaged in the business of overseas shipping under Republic Act (**RA**) No. 7471[4], as amended by RA 9301.[5] It is registered with the Bureau of Internal Revenue (**BIR**). Likewise, it is a Maritime Industry Authority (**MARINA**) Accredited Enterprise from 15 October 2008 until 15 October 2017.

Respondent Commissioner of Internal Revenue (**respondent/CIR**), on the other hand, is vested with authority under the National Internal Revenue Code (**NIRC**) of 1997, as amended, to authorize the examination of taxpayer's books and assess the correct amount of tax as well as decide disputed assessments arising under the said law and other laws administered by the BIR.

On 27 June 2011, respondent issued Letter of Authority (**LOA**) No. SN: eLA201000045011/LOA-034-2011-00000067[6] covering all internal revenue taxes for taxable year (**TY**) 2010 and Letter Notice (**LN**) No. 034-RLF-10-00-00053[7] for alleged taxable liabilities for TY 2010.

Subsequently, respondent issued a Preliminary Assessment Notice (**PAN**) on 23 December 2013[8], assessing petitioner for alleged deficiency income tax (**IT**) and value-added tax (**VAT**) in the amounts of ₱1,961,269.86 and ₱1,434,833.65, respectively.

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additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

2 *Rollo*, pp. 74-100; Penned by Associate Justice Cielito N. Mindaro-Grulla, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy.

3 Id., pp. 93-100; Penned by Associate Justice Cielito N. Mindaro-Grulla, and concurred in by Presiding Justice Roman G. Del Rosario, with Associate Justice Erlinda P. Uy on leave.

4 PHILIPPINE OVERSEAS SHIPPING DEVELOPMENT ACT.

5 AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 7471, ENTITLED "AN ACT TO PROMOTE THE DEVELOPMENT OF PHILIPPINE OVERSEAS SHIPPING" AND FOR OTHER PURPOSES.

6 Exhibit "R-1", Division Docket, Volume II, p. 510.

7 Exhibit "R-8", id., p. 517.

8 Exhibit "R-16", BIR Records, pp. 207-208.

Petitioner then filed a letter[9] dated 06 January 2014[10], requesting the reinvestigation of all its internal revenue tax liabilities for TY 2010.

On 11 April 2014, respondent sent a letter to petitioner requiring the submission of documentary evidence to support its request for reinvestigation.[11]

Unrelenting, respondent issued on 05 August 2014 the Formal Letter of Demand[12] (**FLD**) and Assessment Notice Nos. 34-10-IT-5992 and 34-10-VT-5993[13] which the petitioner received on 12 August 2014. Petitioner filed with the BIR its written protest to the FLD on 02 September 2014.

Later, respondent informed petitioner through a letter[14] dated 17 September 2014 that its case was under reinvestigation and was referred to Revenue District Office (**RDO**) No. 34. Respondent sent another letter dated 20 January 2015 to petitioner, apprising it that it failed to submit the relevant supporting documents within the time allowed and that the docket has been forwarded to the Assessment Division.[15]

On 24 March 2015, respondent issued its Final Decision on Disputed Assessment[16] (**FDDA**), maintaining that the assessment has become final and executory for petitioner's failure to submit the relevant supporting documents.

On 22 April 2015, respondent again sent a letter[17] to petitioner informing it that the case docket will be forwarded to the Collection Division of the region to commence the collection process.

Thereafter, in a letter[18] dated 03 June 2015, respondent addressed an undated protest letter, which he received on 18 May 2015, requesting for reinvestigation. In the same letter, respondent again

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9 Exhibit "R-17", Division Docket, Volume II, p. 530.
10 Exhibit "R-17", Division Docket, Volume II, p. 530.
11 Paragraph 1.4, Admissions and Stipulations, Joint Stipulation of Facts and Issues (JSFI), id., Volume I, p. 351.
12 Exhibit "P-14", id., Volume I, pp. 449-450; Exhibit "R-21", id., Volume II, pp. 534-535.
13 Exhibits "R-22" and "R-23", BIR Records, pp. 228-229.
14 Exhibit "R-24", id., p. 238.
15 Paragraph 1.7, Admissions and Stipulations, JSFI, Division Docket, Volume I, p. 352.
16 Exhibit "R-30", id., Volume II, p. 544.
17 Exhibit "R-31", BIR Records, p. 247.
18 Exhibit "R-32", id., p. 253.

mentioned that it could no longer grant petitioner's request for reinvestigation as the assessment had already become final and executory.

On 12 August 2015, respondent issued a Preliminary Collection Letter (**PCL**) dated 10 August 2015[19] requesting petitioner to pay its alleged deficiency taxes within ten (10) days from receipt thereof. Despite this, petitioner insisted to file its protest against the assessment in a letter dated 01 September 2015.[20] In the same letter, it was adamant of its exemption from income tax and VAT.

On 22 September 2015, petitioner received a letter dated 14 September 2015[21], denying its protest and reiterating the finality of the assessment.

Petitioner then filed its Petition for Review (CTA Case No. 9176) before the Court on 22 October 2015. After trial on the merits, the Court denied the petition for lack of jurisdiction. The dispositive portion of the 30 July 2018 Decision reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED.**
>
> ...

Petitioner filed a Motion for Reconsideration (**MR**) but the same was denied in the assailed Resolution of 15 January 2019.

Aggrieved, petitioner seeks the reversal of the Court in Division's denial of its Petition for Review (CTA Case No. 9176) raising the following issues:

I.

WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE PETITION;

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19 Id., p. 261.
20 Id., pp. 266-269.
21 Id., p. 270.

II.
LOADSTAR INTERNATIONAL SHIPPING, INC. IS NOT LIABLE FOR DEFICIENCY INCOME TAX SINCE IT EXEMPT FROM INCOME TAX BEING A COMPANY ENGAGED IN OVERSEAS SHIPPING PURSUANT TO REPUBLIC ACT NO. 7471, AS AMENDED (EXTENDED) BY R.A. NO. 9301;

III.
LOADSTAR INTERNATIONAL SHIPPING, INC. IS NOT LIABLE FOR DEFICIENCY VALUE-ADDED TAX SINCE ITS SALES ARE VALUE-ADDED TAX (ZERO-RATED) BEING ENGAGED IN OVERSEAS SHIPPING AND AS CONFIRMED BY THE COMMISSIONER'S OWN WITNESSES; and,

IV.
SINCE LOADSTAR INTERNATIONAL SHIPPING, INC. DID NOT EXECUTE ANY WAIVER OF PRESCRIPTIVE PERIOD, THE COMMISSIONER'S AUTHORITY TO ASSESS DEFICIENCY INCOME TAX AND VALUE-ADDED TAX HAS ALREADY PRESCRIBED.

In support of the above issues, petitioner discusses below.

First, the undated protest letter from C.M. Ilagan & Associates, stating that petitioner received the FDDA on 06 April 2015, is considered forgotten evidence and should not be given credence. Petitioner belabors on the fact that the said undated protest letter was not offered in evidence hence, it should not have been considered in rendering the decision. Moreover, petitioner insists that C.M. Ilagan & Associates was not authorized to represent it before the BIR. It claims that respondent failed to submit the copy of petitioner's Board Resolution to prove that C.M. Ilagan & Associates was indeed authorized to file the protest for and in behalf of petitioner. Petitioner argues that it was denied due process when the Court considered documentary evidence not formally offered as evidence.

Second, petitioner contends that respondent judicially admitted that he served the assessment notices, FDDA, collection letter and other subsequent letters to petitioner's *mere* employees. According to petitioner, Section 11[22] of Rule 14 of the Rules of Court (**ROC**) provides:

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22 Rule 14. Summons.

...

Sec. 11. *Service upon domestic private juridical entity.* – When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, that service of summons must be made to the president, managing partner, general manager, corporate secretary, treasurer or in-house counsel. In contravention of the ROC, respondent served all his correspondences to petitioner's employees and did not exert effort to serve the same to the aforementioned officers. Petitioner imputes bad faith on respondent for his failure to abide with the ROC.

Third, petitioner is exempt from IT and VAT for being engaged in international shipping pursuant to RA 7471[23], as amended by RA 9301.[24]

Fourth, petitioner is not liable for VAT for the reason that its sales are considered VAT zero-rated under Section 108(B), Paragraph 4[25], Paragraph 6[26] and Section 109[27] of the NIRC of 1997, as amended.

Lastly, as petitioner did not execute any waiver of the prescriptive period, the period to assess it for deficiency taxes for TY 2010 has already prescribed. Petitioner stressed that the FLD was issued only in August 2014, or more than three (3) years from the filing of the IT and VAT returns.

In refutation to petitioner's arguments, respondent remains firm that he was able to prove petitioner's receipt of the FDDA on 06 April 2015. Respondent emphasized that petitioner even admitted in its Petition for Review that the FDDA was issued on 24 March 2015 and it received another letter informing it that respondent can no longer act

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service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

...

23 Supra at note 4.

24 Supra at note 5.

25 **Sec. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* – ...

...

(4) Services rendered to persons engaged in international shipping or International air transport operations, including leases of property for use thereof;

...

26 (6) Transport of passengers and cargo by air or sea vessels from the Philippines to a foreign country;

27 **Sec. 109.** *Exempt Transactions.* –

...

(T) Sale, importation or lease of passenger or cargo vessels and aircraft, including engine equipment and spare parts thereof for domestic or international transport operations.

...

on the protest for its failure to submit relevant supporting documents within sixty (60) days.

As the assessment has attained finality, respondent insists that petitioner is liable for deficiency IT and VAT. Respondent contends further that an assessment shall become final and executory upon the taxpayer's failure to file a timely administrative protest to the same.

The Court *En Banc's* ruling follows below.

After a careful evaluation of the parties' contrasting arguments, the Court *En Banc* finds the instant Petition for Review bereft of merit.

As the records clearly show, petitioner's issues are mere rehash of its previous arguments before the Court in Division. Even after a repeated and thorough sifting of the records and arguments, We find no cogent reason to deviate from the assailed Decision and Resolution. Evidently, even petitioner's appeal with this Court was belatedly filed.

Section 228 of the NIRC of 1997, as amended, reads in part:

> ...
> **Sect. 228.** *Protesting of Assessment.* –
> ...
>
> **If the protest is denied in whole or in part**, or is not acted upon within one hundred eighty (180) days from submission of documents, the **taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; **otherwise the decision shall become final, executory and demandable.**[28]
>
> ...

Concomitantly, Section 3(a)(1) of Rule 4 on Jurisdiction of the Revised Rules of the Court of Tax Appeals (**RRCTA**) states:

> ...
> **Sec. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

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28 Emphasis supplied.

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.][29]

...

Considering the lapse of time from receipt of the FDDA to the filing of the Petition for Review, respondent's decision has already attained finality. The assessment against petitioner ceased to be a disputed one, thus outside the scope of judicial review. To emphasize, We quote the pertinent portions of the assailed Decision:

...

In this case, petitioner received the FDDA dated March 24, 2015 on April 6, 2015 per its undated letter received by the BIR on May 15, 2015. This was also testified to by respondent's witness, Revenue Officer Jenisse P. Alano, in her Judicial Affidavit, the pertinent portions of which are quoted hereunder:

"Q20. What happened next, if any?

A. On May 15, 2015, we received a letter from C.M. Ilagan & Associates, CPA's stating that the BIR March 24, 2015 letter (FDDA) was received by petitioner on April 6, 2015 and reiterated its request for reinvestigation.

Q21. What was your response to petitioner's request for reinvestigation, if any?

A. In a letter dated June 03, 2015, we informed petitioner that we can no longer act on its undated protest letter received on May 18, 2015 on the ground that a Final Decision on Disputed Assessment (FDDA) has already been rendered and issued on March 24, 2015."

During the hearing on January 17, 2017, respondent's witness, Revenue Officer Alano, was questioned on the matter:

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29 Emphasis and underscoring supplied.

"PRESIDING JUSTICE DEL ROSARIO:

Ms. Alano, you stated in your answer to Question No. 20, kindly go over your Judicial Affidavit, that the petitioner actually received a copy of the FDDA on April 6, 2015. It appears that you based your answer on a letter sent by [C.M.] Ilagan & Associates. Do you have a copy of this letter?

MS. ALANO:

A. Your Honors, can I check?

PRESIDING JUSTICE DEL ROSARIO:

Yes.

It appears that this Letter is not attached to your Judicial Affidavit.

So, Ms. Alano, did you actually see a copy of that letter?

MS. ALANO:

A. Yes, your Honors.

PRESIDING JUSTICE DEL ROSARIO:

And, what would be the reason as to why the same has not been attached to your Judicial Affidavit?

Okay, for the record, 'NO ANSWER.' So, as not to waste the time of the Court.

But do you have a copy of that letter right now?

MS. ALANO:

A. Yes, your Honors[.]

PRESIDING JUSTICE DEL ROSARIO:

Can you show it to the Court?

MS. ALANO:

A. Yes, your Honors.

PRESIDING JUSTICE DEL ROSARIO:

So, kindly go over this letter and please point to the particular portion showing the actual statement saying that the receipt by the petitioner of the FDDA was on April 6, 2015. Is it there?

Just for the record, are you referring to Lines No. 1 and 2, the first and second lines?

MS. ALANO:

A. Yes, you Honors.

PRESIDING JUSTICE DEL ROSARIO:

So, it is apparently indicated that the receipt of the FDDA was on April 6, 2015.

MS. ALANO:

A. Yes, your Honors, 2015.

Based on the foregoing, petitioner received the FDDA on April 6, 2015. Hence, petitioner had until May 6, 2015 within which to appeal the FDDA to the Court of Tax Appeals via Petition for Review.[30]

...

Admittedly, the undated protest was not formally offered in evidence. While it is true that as a general rule, the Court shall not consider any evidence not formally offered, the same admits of an exception. In *Federico Sabay v. People of the Philippines*[31], the Supreme Court ruled:

...

Section 34 of Rule 132 of our Rules on Evidence provides that the court cannot consider any evidence that has not been formally offered. Formal offer means that the offering party shall inform the court of the purpose of introducing its exhibits into evidence, to assist the court in ruling on their admissibility in case the adverse party objects. Without a formal offer of evidence, courts cannot take notice of this evidence even if this has been previously marked and identified.

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[30] Emphasis supplied.

[31] G.R. No. 192150, 01 October 2014; Citations omitted, italics and emphasis in the original text.

> This rule, however, admits of an exception. The Court, in the appropriate cases, has relaxed the formal-offer rule and allowed evidence not formally offered to be admitted.
>
> The cases of *People v. Napat-a, People v. Mate,* and *The Heirs of Romana Saves, et al. v. The Heirs of Escolastico Saves, et al.,* to cite a few, enumerated the requirements so that evidence, not previously offered, can be admitted, namely: ***first***, the evidence must have been duly identified by testimony duly recorded and, ***second***, the evidence must have been incorporated in the records of the case.
>
> ...

The instant case clearly falls within the exception. Although the undated protest was not attached in the Judicial Affidavit of Revenue Officer Jennise P. Alano (**RO Alano**), the same was still presented in Court during the re-cross examination. RO Alano identified the same and such testimony forms part of the records of the case. This has been squarely addressed in the assailed Resolution, to wit:

> ...
>
> In this case, the exception to the general rule that "evidence not formally offered cannot be considered by the Court" applies. The undated letter received by the BIR on May 15, 2015 was duly identified by Revenue Officer Jenisse P. Alano during the hearing on January 17, 2017, to wit:
>
> ...
>
> Moreover, the undated letter has been incorporated in the records of the case. An original copy of the undated letter received by the BIR on May 15, 2015 is found in the Bureau of Internal Revenue (BIR) Records, which was forwarded to this Court on January 15, 2016 pursuant to Section 5(b), Rule 6 of the Revised Rules of Court of Tax Appeals.
>
> Thus, even though the undated letter of CM Ilagan and Associates has not been formally offered in evidence, the Court may consider the same as an exception to the general rule in Section 34 of Rule 132 of the Rules of Court.
>
> ...

Thus, even if we are to disregard the undated protest letter, which states the date of the FDDA's receipt, the outcome will remain unchanged. Still, the belated filing of the Petition for Review (CTA

Case No. 9176) before the Court in Division is too glaring to even doubt the lack of jurisdiction of this Court.

It must be emphasized that petitioner did not deny the receipt of the assessment notices, especially the FDDA and the subsequent PCL. As respondent aptly pointed out, petitioner even attached a copy of the FDDA and the subsequent letter from respondent in its Petition for Review. The said Petition tells:

> ...
>
> 19. On March 24, 2015, the BIR Revenue Region No. 6 issued a FINAL DECISION ON DISPUTED ASSESSMENT maintaining that the assessment made on the Petitioner has become final by operation of law and thereby denying the re-investigation requested by the latter. A copy of the said FINAL DECISION ON DISPUTED ASSESSMENT is hereto attached and marked as Annex **"O"**.
>
> 20. On June 3, 2015, the BIR Revenue Region No. 6 sent another letter to the Petitioner informing it that it can no longer act on its protest since the above document was issued (FDDA) for its failure to submit documents in support of the protest within sixty (60) days and further informing it the docket of its case is now forwarded to the Collection Division. A copy of the Letter dated June 3, 2015, is hereto attached and made an integral part hereof as Annex **"P"**.
>
> ...

It can be gleaned from the records that petitioner is well aware of the issuance of the FDDA and the succeeding correspondences from respondent. The latter consistently conveyed to petitioner the finality of the assessment for its failure to submit relevant supporting documents. Yet, notwithstanding knowledge thereof, it allowed the 30-day appeal period to lapse. Likewise, it also filed a protest to the PCL, a recourse that has no support in law or rules.

The Court also remains unconvinced that C.M. Ilagan & Associates is not petitioner's authorized representative before the BIR. It is quite unusual for an entity (separate from petitioner) to have been able to obtain a petitioner's received copy of the FDDA (with its address on it) if it were not indeed its representative. Interestingly enough, the letter dated 03 June 2015[32] (in response to the undated

[32] Exhibit "R-32", supra at note 17.

protest that petitioner mentioned in its Petition for Review) likewise bore its address.

Furthermore, Section 11[33] of Rule 14 of the ROC primarily applies to service of summons for court cases or matters. The service of BIR's correspondences to petitioner's *mere* employees is sanctioned by Revenue Regulations (**RR**) No. 18-2013[34] that provides:

> ...
>
> 3.1.6 ***Modes of Service***. – The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> **The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.**
>
> **If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.**[35]
>
> ...

At any rate, it is already indisputable that petitioner indeed received all the BIR notices and was able to protest the assessment against it before the BIR. It could not now be allowed to assume a different stance.

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[33] Supra at note 21.
[34] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment
[35] Italics in the original text and emphasis supplied.

All told, this Court has no jurisdiction over petitioner's appeal (CTA Case No. 9176), which was filed almost half a year after its receipt of the FDDA.[36] With this, the Court *En Banc* sees no point in delving further into the other issues raised.

WHEREFORE, premises considered, the instant Petition for Review filed by Loadstar International Shipping, Inc. is hereby **DENIED** for lack of merit. The assailed Decision and Resolution dated 30 July 2018 and 15 January 2019, respectively, in CTA Case No. 9176, entitled *Loadstar Shipping International, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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36 Filed on 22 October 2015.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice