

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 2802
(CTA Case No. 9764)

Present:

-versus-

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

D.M. WENCESLAO &
ASSOCIATES, INC.,
Respondent.

Promulgated:

FEB 06 2025

X- - - - -

X

DECISION

ANGELES, *J.*:

Before the Court *En Banc* is a *Petition for Review*¹ filed by the Commissioner of Internal Revenue (CIR) seeking for reconsideration of the *Resolution*² dated September 15, 2023 (Assailed Resolution), and set aside the *Decision*³ dated May 09, 2023 (Assailed Decision), which cancelled and set aside the Final Decision dated January 10, 2018 and the Final Assessment Notice (FAN) dated January 14, 2013 issued against respondent D.M. Wenceslao & Associates, Inc. (D.M. Wenceslao) for deficiency taxes in the aggregate amount of PhP308,835,204.52 for taxable year (TY) 2009.

¹ En Banc (EB) Docket, pp. 5 to 12.

² *Id.* pp. 32 to 34.

³ *Id.* pp. 14 to 30.

Parties to the case

Petitioner is the duly appointed CIR vested by law to implement and enforce the provisions of the National Internal Revenue Code of 1997, as amended, (1997 NIRC) and other tax laws. He holds office at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City and may be served with summons and other legal processes through his counsels, with office address at the Legal Division, 2/F BIR Revenue Region No. 8B - South NCR, 313 Sen. Gil Puyat Ave., Makati City.⁴

Respondent D.M. Wenceslao is a corporation duly organized and existing under the laws of the Philippines, with principal place of business at 3rd Floor, Aseana Powerstation Bldg., Aseana Business Park, Pres. Diosdado Macapagal Blvd. cor. Bradco Ave., Baclaran, Parañaque City. It is registered with the BIR with Tax Identification Number (TIN) 000-846-618-000, and may be served with summons and legal processes through its legal counsel.⁵

Facts of the Case

The following facts as stated in the *Assailed Decision* are quoted below:

On July 13, 2010, [respondent] received a Letter of Authority (LOA) No. 2009-00019132 dated June 23, 2010, issued by BIR-RDO No. 52, authorizing Revenue Officer (RO) Mariano M. Flores and Group Supervisor (GS) Bernard U. Urbano, to examine petitioner’s books of accounts and other accounting records covering all internal revenue taxes for TY 2009, signed by Regional Director (RD) Jaime B. Santiago.

On January 9, 2013, [respondent] received the Preliminary Assessment Notice (PAN) dated December 28, 2012 from the BIR Revenue Region No. 8, which proposed to assess petitioner for alleged deficiency IT, VAT, EWT, FBT, IAET, and DST, including interest and surcharge for TY 2009 in the following amounts:

Kind of Tax	Amount (₱)
IT	147,269,944.35
VAT	10,982,028.82
EWT	2,922,419.87
FBT	2,060,849.64
IAET	120,805,999.61
DST	2,256,227.62

⁴ *Id.*, p. 6.
⁵ *Id.*

On January 24, 2013, [respondent] received a Formal Assessment Notice (FAN) issued on January 14, 2013 from the BIR-Revenue Region No. 8, covering alleged deficiency IT, VAT, EWT, FBT, IAET and DST with compromise penalty, inclusive of interest and surcharges in the aggregate amount of ₱289,666,887.77 for TY 2009 broken down as follows:

Kind of Tax	Amount (₱)
IT	148,935,776.17
VAT	11,102,834.92
EWT	2,954,457.36
FBT	2,082,238.84
IAET	122,212,005.09
DST	2,279,575.39
Compromise Penalty	100,000.00

On February 6, 2013, [respondent] submitted a Letter dated January 21, 2013 to RD Nestor S. Valeroso acknowledging the receipt of the PAN, and informing him that it would contest the said PAN and prepare its reply and the supporting documents for submission to the BIR on or before February 11, 2013.

On February 11, 2013, [respondent] filed its reply to the PAN.

On February 12, 2013, [respondent] wrote a Letter to RD Valeroso acknowledging the receipt of the FAN on January 24, 2013 and that it would contest the said assessment for submission to the BIR within thirty (30)-day period.

On March 7, 2013, [respondent] filed its Letter dated February 25, 2013 protesting the FAN.

On March 14, 2013, [respondent] received a Letter dated March 6, 2013 from BIR Revenue Region No. 8 signed by RD Valeroso, stating that the FAN was already issued on January 14, 2013, but since the issues involved in the PAN and FAN were the same, the protest letter (Reply to the PAN) dated February 11, 2013 has been considered as the protest against the FAN.

On July 19, 2013, [respondent] received the Final Decision on Disputed Assessment (FDDA) dated July 17, 2013 which resolved [respondent's] protest. In the FDDA, [respondent] was found liable for deficiency taxes, including interest and surcharge as follows:

Kind of Tax	Amount (₱)
IT	159,086,938.82
VAT	11,838,997.04
EWT	3,149,685.82
FBT	2,204,462.86
IAET	130,045,464.21
DST	2,409,655.77
Compromise Penalty	100,000.00

On August 16, 2013, [respondent] filed an administrative appeal with the [petitioner] to question the FDDA.

On January 19, 2018, [respondent] received the assailed Final Decision promulgated on January 10, 2018, which found [respondent] liable for deficiency IT, VAT, EWT, FBT, IAET, DST, and compromise penalty in the aggregate amount of ₱308,835,204.52.⁶

On February 09, 2018, D.M. Wenceslao filed a *Petition for Review* and prayed for the cancellation and withdrawal of the assessment issued by the CIR against it for the alleged deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Fringe Benefits Tax (FBT), Improperly Accumulated Earnings Tax (IAET), Documentary Stamp Tax (DST) and compromise penalty in the aggregate amount of Php308,835,204.52 for TY 2009.

After trial, the CTA First Division (Court in Division) rendered the *Assailed Decision*, which granted D.M. Wenceslao's *Petition for Review* and cancelled and set aside the Final Decision dated January 10, 2018 and the FAN dated January 14, 2013 for being void, *to wit*:

WHEREFORE, premises considered, the Petition for Review filed on February 9, 2018 by petitioner D.M. Wenceslao & Associates, Inc. is **GRANTED**. Accordingly, the Final Decision dated January 10, 2018 and the Formal Assessment Notice dated January 14, 2013 are **CANCELLED** and **SET ASIDE** for being void ab initio.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed income tax, value-added tax, expanded withholding tax, fringe benefits tax, improperly accumulated earnings tax, documentary stamp tax, and compromise penalty for taxable year 2009 in the aggregate amount of ₱308,835,204.52, inclusive of interest arising from the Formal Assessment Notice dated January 14, 2013 issued against petitioner D.M. Wenceslao & Associates, Inc. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.⁷

The CIR moved for the reconsideration of the *Decision* but it was denied in the *Resolution*⁸ dated September 15, 2023.

⁶ *Id.*, pp. 15 to 18.

⁷ *Id.*, p. 29.

⁸ *Id.*, pp. 32 to 34.

✓

On October 10, 2023, the CIR filed a *Motion for Extension of Time to File Petition for Review*⁹ which was granted by the Court on October 11, 2023 through a *Minute Resolution*.¹⁰

On October 26, 2023, the CIR filed the instant *Petition for Review* via registered mail and received by the Court on November 08, 2023.¹¹ D.M. Wenceslao filed its *Comment (Re: Petition for Review dated October 24, 2023)*¹² on December 11, 2023.

On January 16, 2024, the case was submitted for decision.¹³

Issue

The sole issue submitted by the CIR for this Court's decision is whether the Court in Division erred in denying herein petitioner's *Motion for Reconsideration*.

The CIR's arguments

The CIR argues that the Court in Division is without jurisdiction to rule on the *Petition for Review* of the respondent because it was filed beyond the period required by law to file an appeal before the CTA. The CIR also argues that a pre-assessment notice does not bear the same weight of a FAN because it merely gives a tip regarding the BIR's findings against a taxpayer for an informal conference or a clarificatory meeting. He further argues that receipt of the FAN by D.M. Wenceslao before the lapse of the fifteen (15) day period does not affect the due process requirement.

D.M. Wenceslao's arguments

D.M. Wenceslao submits that the grounds relied upon by the CIR to reverse the *Assailed Decision* and *Resolution* deserve scant consideration by the Court for being devoid of any legal or factual basis. It argues that the timeliness of the filing of the *Petition for Review* has been established by the Court in Division. D.M. Wenceslao further argues that the FAN is null and void since it was issued before it could file its protest, in contravention of the CIR's duty to fully and timely consider D.M. Wenceslao's reply to the PAN.

⁹ *Id.*, pp.1 to 2.

¹⁰ *Id.*, p. 4.

¹¹ *Id.*, p.5.

¹² *Id.*, pp. 49 to 60.

¹³ *Minute Resolution* dated January 16, 2024.

✓

Ruling of the Court

The CIR's *Petition for Review* is unmeritorious.

The instant *Petition for Review* was timely filed.

Before ruling on the substantive issue, the Court shall first rule on the timeliness of the CIR's *Petition for Review* filed before the Court *En Banc*.

The CIR received the *Assailed Resolution* on September 26, 2023.¹⁴ The CIR had fifteen (15) days from such receipt or until October 11, 2023 to file his *Petition for Review* before the Court *En Banc*, pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b).¹⁵

On October 10, 2023, the CIR moved for extension of time to file its petition.¹⁶ The motion was granted in a *Minute Resolution* dated October 11, 2023¹⁷ and the period was extended until October 26, 2023. Thus, the instant *Petition for Review* was timely filed on October 26, 2023.

The CTA in Division has jurisdiction over the *Petition for Review* filed on February 09, 2018.

The CIR attacks the jurisdiction of the Court in Division to rule on the case due to alleged belated filing by respondent of its petition.¹⁸ He argues that the Court in Division acted without jurisdiction because D.M. Wenceslao filed its *Petition for Review* beyond the thirty (30)-day period required by law. He further argues that the FAN/FLD became final, executory, and demandable because D.M. Wenceslao filed its protest to the FAN on March 7, 2013 or

¹⁴ *Id.*, p. 31.

¹⁵ Rule 8 Procedure in Civil Cases

Sec. 3. *Who may appeal; period to file petition.*

xxx xxx xxx

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

¹⁶ *Supra*, note 9.

¹⁷ *Supra*, note 10.

¹⁸ *Id.*, p. 7.

✓

forty-two (42) days after it received the FAN on January 24, 2013. He insists that D.M. Wenceslao's filing of its Petition for Review on February 9, 2018 exceeded the thirty (30)-day period provided by law.

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 8292, provides that the CTA has exclusive appellate jurisdiction to review on appeal the decisions of the CIR in cases involving disputed assessments. In relation thereto, Section 3(a)(1), Rule 4 of the RRCTA states that the Court in Division has exclusive original appellate jurisdiction to review by appeal the decisions of the CIR involving disputed assessments.

A taxpayer adversely affected by the decision or inaction of the CIR may appeal to the CTA within thirty (30) days from receipt of the said decision, as provided under Section 228 of the 1997 NIRC, as amended, *viz*:

SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx

xxx xxx xxx

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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

(Emphasis and underscoring supplied)

The above-quoted provision is implemented by Section 3 of Revenue Regulations (RR) No. 12-99¹⁹, as amended by RR No. 18-2013²⁰, which reads as follows:

SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

xxx

3.1.4 Disputed Assessment- xxx

¹⁹ Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

²⁰ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

If the **protest is denied**, in whole or in part, **by the Commissioner's duly authorized representative**, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) **elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision**. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

xxx

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, **the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision**.

(Emphasis and underscoring supplied)

A taxpayer whose protest is denied by the CIR or his duly authorized representative may either (i) appeal with the CTA or (ii) elevate his protest to the Commissioner within thirty (30) days from receipt of the said decision. In the event that the taxpayer chooses the latter option but is adversely affected by a decision, ruling, or inaction of the CIR, the taxpayer may: (a) appeal to the CTA within thirty (30) days from receipt of the decision; or (b) await the final decision of the Commissioner and appeal such final decision to the CTA within thirty (30) days after receipt of a copy of such decision.

In the instant case, D.M. Wenceslao's protest to the FAN was denied and the FDDA was later issued. Instead of filing an appeal with the CTA, D.M. Wenceslao opted to elevate his protest to the CIR and requested for reconsideration of the issued FDDA. Subsequently, the CIR issued its Final Decision. Upon receipt thereof on January 19, 2018, D.M. Wenceslao filed an appeal with the CTA on February 09, 2018 or twenty-one (21) days from its receipt of the Final Decision. Hence, the petition was timely filed and the Court in Division acted with jurisdiction.

n

The right to due process of D.M. Wenceslao was violated.

To support his arguments in his *Petition for Review*, the CIR cites the Supreme Court cases of *CIR vs. Fitness By Design, Inc.*²¹, (Fitness By Design, Inc. case) and *Global Metal Tech Corporation vs. CIR*²² (Global Metal Tech Corporation case). The CIR argues that a pre-assessment notice does not bear the gravity of a formal assessment notice. It merely gives a tip regarding the BIR's findings against a taxpayer for an informal conference or a clarificatory meeting. He posits that the protest against the PAN, unlike the protest against the FAN, is dispensable. He further argues that the issuance of the FAN before the lapse of the fifteen (15)-day period to protest the PAN creates no prejudice to the taxpayer as long as the FAN is properly served and the taxpayer was able to intelligently contest it.

The CIR's reliance on the cited cases is misplaced. The *Global Metal Tech Corporation case* involved an assessment that became final and executory for failure of petitioner to timely protest the FLD/FAN within the thirty (30)-day period provided by law. As the assessment involved already became final, executory, and demandable, the validity and correctness of such assessment may no longer be questioned on appeal.²³ In the *Fitness By Design case*, the FAN issued by the CIR did not comply with the requirements of a valid assessment notice and it caused confusion on the part of the taxpayer. For such reason, the FAN was cancelled and set aside.

The instant case involves issuance of the FAN and FLD before the lapse of the fifteen (15)-day period to file a reply to the PAN. The Court thus finds that the case of *Prime Steel Mill Incorporated vs. CIR*²⁴ (Prime Steel Mill Incorporated case), which reiterated the case of *Commissioner of Internal Revenue v. Yumex Philippines Corporation*²⁵, applies more squarely to resolve the present issue. In the *Prime Steel Mill Incorporated case*, the Supreme Court found of no moment the filing by the taxpayer of its protest against the FAN. The High Court found that the taxpayer's right to due process was violated when the BIR failed to observe the fifteen (15)-day period granted to the taxpayer and when it issued the FAN and FLD before the taxpayer filed its Reply to the PAN. It placed importance on RR No. 12-99, which explicitly grants the taxpayer fifteen (15) days

²¹ G.R. No. 215957, November 09, 2016.

²² CTA Case No. 8329, [sic] September 23, 2014 (CTA EB No. 1273), G.R. No. 227616 (Notice of Resolution dated June 19, 2019).

²³ Stated in a Separate Opinion citing the case of *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

²⁴ G.R. No. 249153, September 12, 2022.

²⁵ G.R. No. 222476, May 05, 2021.

from receipt of the PAN to file a response. It is only when the taxpayer failed to respond within the prescribed period that the taxpayer is considered in default. In such instance, the CIR or his duly authorized representative shall issue an FLD/FAN demanding payment of the assessed deficiency tax, surcharges, and penalties.²⁶

Section 228 of the 1997 NIRC provides that the CIR or his duly authorized representative shall first notify the taxpayer of his findings through a pre-assessment notice. Read together with Section 3 of RR No. 12-99, the relevant implementing rules and regulations, the taxpayer is required to respond fifteen (15) days from receipt of said notice. If the taxpayer fails to respond, the CIR or his duly authorized representative shall issue an assessment based on his findings. Section 3 of RR No. 12-99, reads as follows:

SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

XXX XXX XXX

3.1.1 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based

If the **taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. [Emphasis Supplied].

If the taxpayer, **within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

XXX XXX XXX

3.1.4 Disputed Assessment. – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within

²⁶ *Supra*, note 24.

thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation xxx.

xxx

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

In the present case, D.M. Wenceslao received the PAN on January 09, 2013.²⁷ Consequently, it had fifteen (15) days or until January 24, 2013 to submit its reply to the PAN. Before the period lapsed, however, the CIR issued the FAN on January 14, 2013²⁸ or only five (5) days from the receipt by the respondent of the PAN.

The BIR is bound by its own rules, which expressly provide that the FLD/FAN is issued if the taxpayer fails to reply to the PAN within fifteen (15) days from its receipt thereof. The CIR, thus, violated the right to due process of D.M. Wenceslao when it issued the FAN before the lapse of the fifteen (15)-day period. Contrary to the CIR's argument, the filing by D.M. Wenceslao of its protest against the FAN is of no moment when the right to due process of the taxpayer is violated.²⁹ In view thereof, the assessment issued against the respondent is void and bears no valid fruit.

In *Commissioner of Internal Revenue v. Missouri Square, Inc.*³⁰, the Supreme Court held that a taxpayer's right to due process is violated if it is deprived of the full fifteen (15)-day period to respond to the PAN. The defect in due process is not cured by the fact that the taxpayer was able to file a protest to the FAN.³¹ It is worth stressing that in balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.³²

²⁷ Division Docket, Volume II, Exhibit "P-4-A", p. 1092

²⁸ Division Docket, Volume II, Exhibit "P-5", p. 1093.

²⁹ *Supra*, note 24.

³⁰ G.R. No. 238574 (Notice), July 11, 2018.

³¹ *Mannasoft Technology Corporation vs. CIR*, G.R. No. 244202, July 10, 2023, citing *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 05, 2021.

³² *Commissioner of Internal Revenue vs. BASF Coating+Inks Phils., Inc.* G.R. No. 198677, November 16, 2014.

The Supreme Court has previously enjoined the CIR to strictly comply with the requirements laid down by law and its own rules. The power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law.³³ In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*³⁴, the Supreme Court reiterated that the BIR should strictly observe the prescribed procedure for issuance of the assessment notices with due regard for the taxpayers' constitutional rights. It is the duty of the BIR to inform the taxpayer through the PAN, FLD, and FAN of the facts, laws, regulations, and jurisprudence on which the assessment is based. In the performance of its duty, it should duly accord the taxpayer the opportunity to be heard, even during tax investigation and tax assessment. It is a well-settled rule in taxation law that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and RR No. 12-99, as amended, is void and produces no effect.³⁵

Based on the foregoing, the Court finds no error committed by the Court in Division in granting the *Petition for Review* filed by D.M. Wenceslao and denying the *Motion for Reconsideration* filed by the CIR.

WHEREFORE, premises considered, the *Petition for Review* filed by the petitioner Commissioner of Internal Revenue is **DENIED** for lack of merit. The *Resolution* dated September 15, 2023 and *Decision* dated May 09, 2023 in CTA Case No. 9764, which cancelled and set aside the Final Decision and the Final Assessment Notice, are hereby **AFFIRMED**.

SO ORDERED.


HENRY S. ANGELES
Associate Justice

³³ *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 08, 2010.

³⁴ G.R. Nos. 201398-99 & 201418-19, October 03, 2018.

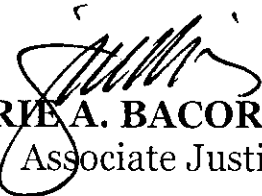
³⁵ *Supra*, note 25.

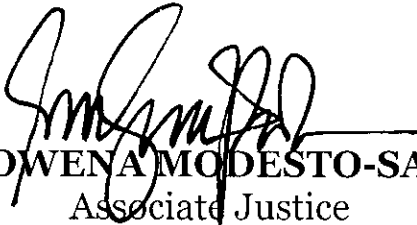
WE CONCUR:

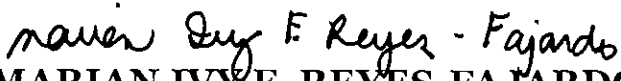

ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

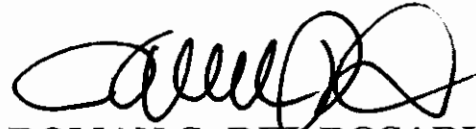

MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
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