

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

**COMMISSIONER OF
INTERNAL REVENUE,**
Petitioner,

CTA EB CASE NO. 1150
(CTA Case No. 8501)

-versus-

**DAKUDAO & SONS,
INCORPORATED,**
Respondent.

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS
RINGPIS-LIBAN, JJ.

Promulgated:

MAY 12 2015

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[Signature] 3:25 p.m.

DECISION

MINDARO-GRULLA, J.:

Before this Court is a Petition for Review under Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals¹ seeking nullification of the Decision² dated January 2,

¹ 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 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.

² *En banc* Docket, pp. 28-52.

13, 2014, rendered by the Second Division of this Court³ in CTA Case No. 8501, and its Resolution⁴ dated March 21, 2014.

Petitioner Commissioner of Internal Revenue (CIR) seeks reversal of both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated January 13, 2014:

"WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **P112,140,000.00** representing petitioner's erroneously paid VAT for the fourth quarter of taxable year 2011.

SO ORDERED."

Resolution dated March 21, 2014:

"WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration is **DENIED** for lack of merit.

SO ORDERED."

The facts culled from the records are undisputed:

"Petitioner (herein Respondents) owned two (2) parcels of land located in Davao City, namely: Lot 2, Pcs-11-004637 consisting of 20,098 square meters, with Transfer Certificate of Title (TCT) No. 4

³ Penned by Associate Justice Juanito C. Castaneda, Jr. and concurred in by Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas.

⁴ *Supra* note 2, pp. 53-54.

T-428359; and Lot 5-A, PSD-11-111425, being a portion of Lot 5, Pcs-11-004637 consisting of 42,202 square meters and covered by TCT No. 146-2010009680, both issued by the Register of Deeds of Davao City.

On March 24, 2011, Metro South Davao Property Corporation (MSDPC) was registered with the SEC as a domestic corporation with an authorized capital stock divided into 20,000 shares; it is likewise engaged in real estate dealings. After MSDPC's incorporation, there were still 15,000 unsubscribed shares remaining, which petitioner bought. On April 1, 2011, to accommodate petitioner's additional subscription, MSDPC's authorized capital stock was amended from 20,000 shares to 4,984,000 shares or a total increase of 4,964,000 shares that the SEC approved on May 6, 2011.

As consideration for said subscription, petitioner executed a Deed of Assignment in favour of MSDPC on April 30, 2011, assigning all its rights and interest over the two (2) parcels of land in favor of MSDPC.

On December 20, 2011, petitioner paid the BIR the amount of P112,140,000.00 for the VAT of said transfer.

Petitioner however alleged that since the transfer of the subject parcels of land was made in exchange for shares of stock to a controlled corporation, its payment of VAT was erroneous and/or excessive. Thus, on May 2, 2012, petitioner filed an administrative claim for VAT refund with the BIR Revenue Region No. 19, Revenue District Office (RDO) No. 113, Davao City."⁵ 4

⁵ *Ibid.* pp. 29-30.

On June 11, 2012, respondent Dakudao & Sons, Inc. (Dakudao), filed a Petition for Review which was raffled to the Second Division of this Court claiming for refund in the amount of P112,140,000.00 allegedly representing erroneously paid value-added tax.⁶ Dakudao's claim was mainly anchored in Section 4.106-8 of Revenue Regulation (RR) No. 16-2005, as amended by RR No. 04-2007 and in Sections 204(C) and 229 of the 1997 National Internal Revenue Code (NIRC,) as amended; asserting that revenue regulations or administrative issuances have the force of law and are entitled great weight.

On the other hand, petitioner CIR lengthily reproduced RR No. 18-2001 in relation to Section 40 (C) (2) of the 1997 NIRC, as amended; arguing that since Dakudao failed to apply for a BIR ruling to confirm that the exchange of property for shares of stock is exempted from payment of VAT as mandated by said RR, it therefore correctly paid the VAT due on the transfer of its parcels of land. Furthermore, the CIR asserts that the exchange of Dakudao's parcels of land with shares of stocks of MSDPC is not one of the exempt transactions enumerated under Section 109 of the 1997 NIRC, as amended. CIR likewise points out that Dakudao's failure to submit the required documents required under Revenue Memorandum Order (RMO) No. 53-98 does not entitle it to a refund.⁷

On February 03, 2014, following the granting of the claim for refund to Dakudao by the Second Division, CIR filed a Motion for Reconsideration praying that the Court set aside the Decision promulgated on January 13, 2014, and render a new one which will deny Dakudao's claim for refund. This was denied by the Second Division in its Resolution promulgated on March 21, 2014 for lack of merit.⁸

On April 07, 2014, CIR filed a Motion for Extension of Time to file Petition for Review⁹ which was granted by the Court thus giving petitioner fifteen (15) days from April 08,

⁶ *Ibid.* p. 30.

⁷ *Ibid.* pp. 44-45.

⁸ *Ibid.* p. 54.

⁹ *Ibid.* pp. 1-5.

2014 or until April 23, 2014, within which to file her Petition for Review.¹⁰

On April 23, 2014, CIR filed her Petition for Review.¹¹ On May 27, 2014, respondent was ordered to file its Comment thereon within ten (10) days from receipt of the Resolution. Furthermore, petitioner's counsel was ordered to submit within five (5) days from receipt of the Resolution his updated IBP Official Receipt Number for the year 2014 or Life Member Number.¹²

On June 13, 2014, petitioner's counsel filed his Compliance with the said Order.¹³

On June 16, 2014, respondent filed its Comment/ Opposition to petitioner's Petition for Review.¹⁴ Upon the filing of the Compliance and the Comment/ Opposition and consideration of the issues raised in the Petition for Review, the Court *En Banc* resolved to give due course to the Petition for Review subsequently ordering both parties to file their respective memoranda within thirty (30) days from receipt of said Resolution.¹⁵

On September 04, 2014 and September 05, 2014, both petitioner and respondent filed their respective Motions for Extension of Time to file their Memoranda which in turn was granted by the Court *a quo* on September 08, 2014.¹⁶ Thereafter, on October 03, 2014¹⁷ petitioner CIR filed its Memorandum whilst respondent Dakudao filed its Memorandum on October 07, 2014.¹⁸

The issue submitted to the *En Banc* for consideration is whether or not the Second Division of the Court of Tax Appeals erred in granting the refund in the amount of Php

¹⁰ *Ibid.* p. 6.

¹¹ *Ibid.* 7-27.

¹² *Ibid.* p. 59-60.

¹³ *Ibid.* pp. 61-63.

¹⁴ *Ibid.* pp. 64-71.

¹⁵ *Ibid.* pp. 74-75.

¹⁶ *Ibid.* p. 85.

¹⁷ *Ibid.* p. 86-104.

¹⁸ *Ibid.* pp. 106-127.

112,140,000.00, representing erroneous payment of value-added tax in the 4th quarter of the taxable year 2011.

In support of her claim, the same issues presented by the petitioner at the Division level is again presented to the court *En Banc*, albeit arranged differently.

First, petitioner CIR asserts that respondent Dakudao correctly paid its VAT liability based on the fact that Dakudao herein failed to apply for a ruling with the BIR confirming that the exchange of property for shares of stock is exempted from payment of VAT, as required by RR No. 18-2001.¹⁹

Second, she contends that Dakudao's transfer of the subject property in exchange for shares of stocks of MSDPC is not one of those exempt transactions enumerated under Section 109 of the 1997 NIRC, as amended.

And third, the alleged failure of respondent to submit documentary requirements as provided for by RMO No. 53-98, dated June 01, 1998 warrants the denial of its claim for refund.

Petitioner's Petition for Review is bereft of merit.

First, RR 18-2001, which was enacted pursuant to Section 40(C)(2) of the 1997 NIRC, deals with income tax and not value-added tax. As so aptly worded by the Court in Division;

"...the Revenue Regulation that respondent (herein Petitioner) relied on to justify petitioner's (herein Respondent) payment of VAT, was enacted pursuant to Section 40 (C) (2) of the NIRC of 1997, as

¹⁹ Guidelines on the Monitoring of the Basis of Property Transferred and Shares Received, Pursuant to a Tax-Free Exchange of Property for Shares under Section 40 (C) (2) of the National Internal Revenue Code of 1997, Prescribing the Penalties for Failure to Comply with such Guidelines, and Authorizing the Imposition of Fees for the Monitoring Thereof.

amended; which falls under Title II of the Tax Code, more specifically described as Tax Income. It speaks of exchange of property for the purpose of determining gain or loss; it does not deal with value-added tax, which is found under Title IV of the same Code. Moreover, RR 18-2001 merely provides for guidelines in monitoring tax-free exchange of property. The BIR ruling required thereon is for the monitoring of tax-free properties in order that in cases of subsequent sales of said properties, they shall be taxed accordingly. **Stated differently, the BIR ruling/ certification required under RR No. 18-2001 is for determining gain or loss on a subsequent sale or disposition of property subject of the tax-free exchange, and not as a precondition for availment of a tax exemption.”** (Emphasis supplied)

Furthermore, RR No. 18-2001 which petitioner relies on for the denial of the claim for refund by respondent merely provides for guidelines in the monitoring of the properties as well as shares of stocks, which are involved in a tax-free exchange under Section 40(C)(2) of the NIRC. The Revenue Regulation does not deal with a requirement to apply for a ruling as a prerequisite for the entitlement of the exemption. RR No. 18-2001 shows nothing therein explicitly requiring a party, in exchanging property for shares of stocks, to first secure a BIR confirmatory certification or tax ruling before it can avail itself of tax exemption or tax refund.

Such can be readily seen from the RR itself.

“Subject: Guidelines on the Monitoring of the Basis of Property Transferred and Shares Received, Pursuant to a Tax-Free Exchange of Property for Shares under Section 40(C)(2) of the National Internal Revenue Code of 1997, Prescribing the Penalties for Failure to Comply with such Guidelines, and Authorizing the Imposition of Fees for the Monitoring Thereof.”

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Section 1. *Scope.* – Pursuant to Section 244, in relation to Sections 40(C)(2), 58(E), 269, and 275 of the National Internal Revenue Code of 1997 (Tax Code of 1997), these Regulations are hereby promulgated for the purpose of providing the guidelines in the proper monitoring of the basis of properties transferred, and shares received, pursuant to a tax-free exchange under Section 40(C)(2) of the Tax Code of 1997, and to establish the policies governing the imposition of fees for the monitoring thereof.”

These being considered, the Court is of the position that securing a BIR ruling under RR No. 18-2001 is not a condition *sine qua non* for the availment of tax exemption.

Second, with regard to the issue of said transaction not being one of those exempt transactions enumerated under Section 109²⁰ of the 1997 NIRC, as amended, again, 4

²⁰ **SEC. 109. Exempt Transactions.** - The following shall be exempt from the value-added tax:

- (a) Sale of nonfood agricultural products; marine and forest products in their original state by the primary producer or the owner of the land where the same are produced;
- (b) Sale of cotton seeds in their original state; and copra;
- (c) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of or kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.
Products classified under this paragraph and paragraph (a) shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping.
Polished and/or husked rice, corn grits, raw cane sugar and molasses, and ordinary salt shall be considered in their original state;
- (d) Sale or importation of fertilizers; seeds, seedlings and fingerlings; fish, prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets);
- (e) Sale or importation of coal and natural gas, in whatever form or state, and petroleum products (except lubricating oil, processed gas, grease, wax and petrolatum) subject to excise tax imposed under Title VI;

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- (f) Sale or importation of raw materials to be used by the buyer or importer himself in the manufacture of petroleum products subject to excise tax, except lubricating oil, processed gas, grease, wax and petrolatum;
- (g) Importation of passenger and/or cargo vessels of more than five thousand tons (5,000) whether coastwise or ocean-going, including engine and spare parts of said vessel to be used by the importer himself as operator thereof;
- (h) Importation of personal and household effects belonging to the residents of the Philippines returning from abroad and nonresident citizens coming to resettle in the Philippines: *Provided*, That such goods are exempt from customs duties under the Tariff and Customs Code of the Philippines;
- (i) Importation of professional instruments and implements, wearing apparel, domestic animals, and personal household effects (except any vehicle, vessel, aircraft, machinery other goods for use in the manufacture and merchandise of any kind in commercial quantity) belonging to persons coming to settle in the Philippines, for their own use and not for sale, barter or exchange, accompanying such persons, or arriving within ninety (90) days before or after their arrival, upon the production of evidence satisfactory to the Commissioner, that such persons are actually coming to settle in the Philippines and that the change of residence is bona fide;
- (j) Services subject to percentage tax under Title V;
- (k) Services by agricultural contract growers and milling for others of palay into rice, corn into grits and sugar cane into raw sugar;
- (l) Medical, dental, hospital and veterinary services subject to the provisions of Section 17 of Republic Act No. 7716, as amended;
- (m) Educational services rendered by private educational institutions, duly accredited by the Department of Education, Culture and Sports (DECS) and the Commission on Higher Education (CHED), and those rendered by government educational institutions;
- (n) Sale by the artist himself of his works of art, literary works, musical compositions and similar creations, or his services performed for the production of such works;
- (o) Services rendered by individuals pursuant to an employer-employee relationship;
- (p) Services rendered by regional or area headquarters established in the Philippines by multinational corporations which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region and do not earn or derive income from the Philippines;
- (q) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree Nos. 66, 529 and 1590;
- (r) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;
- (s) Sales by electric cooperatives duly registered with the Cooperative Development authority or National Electrification Administration, relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity;
- (t) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority whose lending operation is limited to their members;
- (u) Sales by non-agricultural, non- electric and non-credit cooperatives duly registered with the Cooperative Development Authority: *Provided*, That the share capital contribution of each member does not exceed Fifteen thousand

petitioner CIR's arguments fail to impress. It must be noted that Dakudao bases its claim for refund on Section 4.106-8 (b) of RR No. 16-2005²¹, as amended by RR No. 04-2007.²² The pertinent parts of the provision are quoted as follows:

"Section 4.106-8. Change or Cessation of Status as VAT-registered Person.-

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(b) Not subject to output tax

pesos (P15,000) and regardless of the aggregate capital and net surplus ratably distributed among the members;

(v) Export sales by persons who are not VAT-registered;

(w) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business or real property utilized for low-cost and socialized housing as defined by Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related laws, house and lot and other residential dwellings valued at One million pesos (P1,000,000) and below: *Provided*, That not later than January 31st of the calendar year subsequent to the effectivity of this Act and each calendar year thereafter, the amount of One million pesos (P1,000,000) shall be adjusted to its present value using the Consumer Price Index, as published by the national Statistics Office (NSO);

(x) Lease of a residential unit with a monthly rental not exceeding Eight thousand pesos (P8,000); *Provided*, That not later than January 31st of the calendar year subsequent to the effectivity of Republic Act No. 8241 and each calendar year thereafter, the amount of Eight thousand pesos (P8,000) shall be adjusted to its present value using the Consumer Price Index as published by the National Statistics Office (NSO);

(y) Sale, importation, printing or publication of books and any newspaper, magazine review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements; and

(z) Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of Five hundred fifty thousand pesos (P550,000): *Provided*, That not later than January 31st of the calendar year subsequent to the effectivity of Republic Act No. 8241 and each calendar year thereafter, the amount of Five hundred fifty thousand pesos (550,000) shall be adjusted to its present value using the Consumer Price Index, as published by the National Statistics Office (NSO).

The foregoing exemptions to the contrary notwithstanding, any person whose sale of goods or properties or services which are otherwise not subject to VAT, but who issues a VAT invoice or receipt therefor shall, in addition to his liability to other applicable percentage tax, if any, be liable to the tax imposed in Section 106 or 108 without the benefit of input tax credit, and such tax shall also be recognized as input tax credit to the purchaser under Section 110, all of this Code.

²¹ Dated September 01, 2005, otherwise known as "Consolidated Value-Added Tax Regulations of 2005."

²² Dated February 07, 2007, entitled "Amending Certain Provisions of Revenue Regulations No. 16-2005, as amended, otherwise known as the Consolidated Value-Added Tax Regulations of 2005."

The VAT shall not apply to goods or properties existing as of the occurrence of the following:

- (1) Change of control of a corporation by the acquisition of the controlling interest of such corporation by another stockholder or group of stockholders. The goods or properties used in business or those comprising the stock-in-trade of the corporation, having a change in corporate control, will not be considered sold, bartered or exchanged despite the change in the ownership interest in the said corporation.

Illustration: Abel Corporation is a merchandising concern and has an inventory of goods for sale amounting to Php1 million. Nel Corporation, a real estate developer, exchanged its real estate properties for the shares of stocks of Abel Corporation resulting to the acquisition of corporate control. The inventory of goods owned by Abel Corporation (Php1 million worth) is not subject to output tax despite the change in corporate control because the same corporation still owns them. This is in recognition of the separate and distinct personality of the corporation from its stockholders. However, the exchange of real estate properties held for sale or for lease, for shares of stocks whether resulting to corporate control or not, is subject to VAT, subject to exceptions provided under Section 4.106-3 hereof. On the other hand, **if the transferee of the transferred real property by a real estate dealer is another real estate dealer, in an exchange where the transferor gains control of the transferee-corporation, no output VAT**

is imposable on the said transfer.
(Emphasis supplied)

- (2) Change in the trade or corporate name of the business;
- (3) Merger or consolidation of corporations. The unused input tax of the dissolved corporation, as of the date of merger or consolidation, shall be absorbed by the surviving or new corporation."

The illustration above readily shows that the transfer by a real estate dealer on one hand to another real estate dealer where the transferor gains control of the transferee-corporation shall not be subject to output VAT.

Putting the Revenue Regulations into context, the respective Articles of Incorporation²³ of respondent Dakudao and of MSDPC indicate the purpose for which they were incorporated; viz., the construction, development, improvement of all properties, including but not limited to real estate. A "Real Estate Dealer," meanwhile, includes any person engaged in the business of buying, developing, selling, exchanging real properties as principal and holding himself out as a full or part-time dealer in real estate.²⁴ Thus, based on the Articles of Incorporation and the definition of "Real Estate Dealer" as provided for under RR No. 16-2005, both respondent and MSDPC are considered as real estate dealers.

It bears stressing that respondent Dakudao subscribed 4,964,000 shares of capital stock of MSDPC (or 75% of the total subscribed capital stock,) and as payment of the subscription, Dakudao assigned two parcels of land to MSDPC. The assignment resulted to respondent having controlling interest over MSDPC.²⁵ As such, pursuant to Section 4.106-8 (b) of Revenue Regulations 16-2005, as

²³ Exhibit "B," Dakudao & Sons Incorporated's Amended Articles of Incorporation; Exhibit "E," Metro South Davao Property Corporation's Articles of Incorporation; Exhibit "H," Metro South Davao Property Corporation's Amended Articles of Incorporation.

²⁴ Sec. 4.106-3, Revenue Regulations No. 16-2005.

²⁵ Exhibit "I," "T" & "U."

amended by RR No. 04-2007, the transfer of the lands in exchange for MSDPC's shares of stock is not subject to VAT.

Third, anent petitioner's contention that it is imperative for respondent to show proof of compliance with the checklist of requirements to be submitted involving a claim for VAT refund/ tax credit in accordance with the requirements set forth under RMO No. 53-98, this Court agrees with respondent that said RMO is for tax audit investigation and not for refund of erroneously paid VAT. The same is explicit in its objective, which is to "identify the documents to be required from a taxpayer during audit."²⁶

RMO No. 53-98 merely prescribes the documents required for submission by a taxpayer upon audit of his tax liabilities per type of tax, as well as the different mandatory audit reporting requirements to be prepared, submitted and attached to a tax audit docket by a Revenue Officer. The case at bar being a claim for refund of VAT erroneously paid by a taxpayer, and not a tax audit investigation, said RMO is not applicable.

However, assuming *arguendo* that respondent failed to submit the complete documents listed in RMO No. 53-98, this Court has consistently held that the term "complete documents" should be understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that petitioner ought to know the tax records of all taxpayers.²⁷ 

²⁶ Subject: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

²⁷ *Diageo Philippines v. Commissioner of Internal Revenue* CTA Case No. 7846 and 7865, January 16, 2012, citing *BPI-Family Savings Bank, Inc. v. Court of Appeals, et. Al.*, G.R. No. 122480, April 12, 2000, and *Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

Judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the "complete documents" in support of its administrative claim for refund. The non-submission of supporting documents in the administrative level is not lethal to a claim for refund.

In this respect, this Court has consistently ruled that the requirements listed under RMO No. 53-98 refer mainly to the requirements for refund or tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim for refund or credit. However, in the judicial level or when the case is elevated to the Court, it is the duty of the claimant to prove its entitlement to the claim for refund or credit, and the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.²⁸

WHEREFORE, the petition is **DENIED**. The Decision dated January 13, 2014, rendered by the Second Division of this Court in CTA Case No. 8501, and its Resolution dated March 21, 2014 are **AFFIRMED**. No pronouncement as to costs.

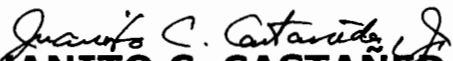
SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

²⁸ *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership; Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, CTA EB Nos. 863, 865, October 23, 2012.

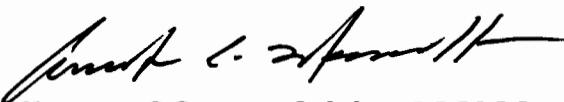

JUANITO C. CASTANEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.


ROMAN G. DEL ROSARIO
Presiding Justice