

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA EB No. 2833
(CTA Case No. 9879)

Present:

- *versus* -

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

**COURT OF TAX APPEALS
SPECIAL SECOND DIVISION
and AIG SHARED SERVICES
CORPORATION (PHILIPPINES),**

Respondents.

Promulgated:

JAN 16 2025

X - - - - - *4:10p.m.* X

D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Certiorari Under Rule 65* filed on November 23, 2023¹ by the Commissioner of Internal Revenue (CIR), which seeks to reverse and set aside the Resolutions promulgated on April 28, 2023² and August 29, 2023,³ respectively, of the Court of Tax Appeals (CTA) Special Second (2nd) Division.

For easy reference, the dispositive portion of the April 28, 2023 Resolution reads:

¹ EB Docket, pp. 1-25.

² EB Docket, pp. 34-41.

³ EB Docket, pp. 43-50. *cm*

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“WHEREFORE, petitioner’s Petition for Relief from Judgment filed on 31 March 2023 is hereby **DISMISSED** for being filed out of time.

SO ORDERED.”⁴

On the other hand, the dispositive portion of the August 29, 2023 Resolution reads:

“WHEREFORE, premises considered, the ‘Motion for Reconsideration (Re: Resolution dated 28 April 2023)’ filed by respondent Commissioner of Internal Revenue on 18 May 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.”

FACTS

On October 26, 2021, the CTA Second (2nd) Division rendered a Decision⁵ in favor of private respondent AIG Shared Services Corporation (Philippines) (AIG) by partially granting its claim for refund. The dispositive portion of the said Decision reads:

“WHEREFORE, premises considered, the present Petition for Review filed by petitioner AIG Shared Services Corporation (Philippines) on 23 July 2018 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue, is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P12,812,480.60, representing unutilized excess input value-added tax (VAT) attributable to its zero-rated sales for the four (4) quarters of taxable year ended 31 December 2016.

SO ORDERED.”⁶

Petitioner, through the Office of the Solicitor General (OSG) received a copy of the said Decision on November 23,

⁴ See Note 2, p. 41.

⁵ Penned by Associate Justice Jean Marie A. Bacorro-Villena, with Retired Associate Justice Juanito C. Castañeda, Jr. concurring, Division Docket, Vol. IV, pp. 1798-1851.

⁶ See Note 5, p. 1850. 

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2021.⁷ Likewise, petitioner received a copy of the same on November 11, 2021.⁸

On December 1, 2021, private respondent AIG filed its Omnibus Motion: 1.) For Partial Reconsideration of Decision dated October 26, 2021; and 2.) For New Trial.⁹ On July 21, 2022, the CTA Special Second (2nd) Division issued a Resolution¹⁰ denying the said petitioner's omnibus motion for lack of merit. Petitioner received a copy of the said Resolution on August 3, 2022.¹¹

As per Records Verification¹² dated November 18, 2022, the OSG and petitioner received the July 21, 2022 Resolution on August 4, 2022 and August 3, 2022, respectively. Meanwhile, no CTA En Banc/Supreme Court appeal was filed by any of the parties.¹³

Consequently, on November 28, 2022, the CTA Special Second (2nd) Division issued a Resolution¹⁴ to issue an Entry of Judgment¹⁵ of the Decision dated October 26, 2021, which had become final and executory on August 19, 2022.¹⁶ Petitioner and private respondent AIG received a copy of the Entry of Judgment on January 30, 2023 and February 3, 2023, respectively.¹⁷

On March 22, 2023, private respondent AIG filed its Motion for Issuance of Writ of Execution.¹⁸ On March 27, 2023, the CTA Special Second (2nd) Division issued a Resolution¹⁹ granting the said motion.

On March 31, 2023, petitioner filed its Petition for Relief from Judgment²⁰ before the CTA Special Second (2nd) Division.

⁷ Notice of Decision, Division Docket, Vol. IV, p. 1796.

⁸ Notice of Decision, Division Docket, Vol. IV, p. 1797.

⁹ Division Docket, Vol. IV, pp. 1852-1862.

¹⁰ Division Docket, Vol. IV, pp. 1876-1882.

¹¹ Notice of Resolution, Division Docket, Vol. IV, p. 1875.

¹² Division Docket, Vol. IV, p. 1883.

¹³ See Note 11.

¹⁴ Division Docket, Vol. IV, p. 1885.

¹⁵ Division Docket, Vol. IV, p. 1887.

¹⁶ See Note 13.

¹⁷ Division Docket, Vol. IV, p. 1886.

¹⁸ Division Docket, Vol. IV, pp. 1891-1894.

¹⁹ Division Docket, Vol. IV, p. 1963.

²⁰ Division Docket, Vol. IV, pp. 1964-1984. 

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On April 28, 2023, the CTA Special Second (2nd) Division rendered the first assailed Resolution.²¹ In ruling against petitioner, the Court in Division pertinently found that:

“Records show further that the 26 October 2021 Decision was entered on 19 August 2022. Accordingly, petitioner has six (6) months therefrom, or until 15 February 2023, within which to file the instant petition. However, petitioner filed the instant petition only on 31 March 2023.”²²

On May 2023, petitioner filed his Motion for Reconsideration (Re: Resolution dated 28 April 2023).²³ On June 13, 2023, private respondent AIG filed its Comment [on Respondent’s Motion for Reconsideration dated May 17, 2023].²⁴ On August 29, 2023, the CTA Special Second (2nd) Division rendered the second assailed Resolution denying the motion for lack of merit.

On November 23, 2023, petitioner filed the instant Petition for Certiorari Under Rule 65.²⁵ On December 12, 2023, the Court *En Banc* issued a Resolution²⁶ directing private respondent AIG to file its Comment. On January 8, 2024, private respondent AIG filed its Comment (on Petition for Certiorari under Rule 65 dated November 13, 2023).²⁷

On January 18, 2024,²⁸ the Court *En Banc* issued a resolution submitting the case for decision. Hence, this Decision.

ISSUE

Petitioner raised the sole issue “[W]hether or not the Special Second Division of the Honorable Court erred when it ruled that the Petition for Relief from Judgment was filed out of time.”²⁹

²¹ See Note 2.

²² See Note 2, p. 38.

²³ Division Docket, Vol. IV, pp. 2004-2024.

²⁴ Division Docket, Vol. IV, pp. 2028-2053.

²⁵ See Note 1.

²⁶ Notice, EB Docket, p. 51.

²⁷ EB Docket, pp. 52-82.

²⁸ EB Docket, p. 85.

²⁹ See Note 1, Ground for the Petition, EB Docket, p. 5. 

Petitioner's arguments

Petitioner asserts the following in the instant Petition:

“Based on the above-cited provision, the Petition for Relief must be filed within sixty (60) days after the petitioner learns of the judgment, final order or other proceeding to be set aside. Thus, respondent has sixty (60) days from 30 January 2023 or until 31 March 2023 within which to file the instant Petition with this Honorable Court.

The said provision likewise provides that the Petition must be filed within six (6) months after such judgment or final order was entered, or such proceeding was taken, and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the respondent's good and substantial cause of action or defense, as the case may be.

It must be stressed that in a Resolution promulgated 28 November 2022, the Special Second Division stated, among others:

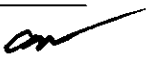
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Thus, as of 29 November 2022, the Decision dated 26 October 2021 has not yet been entered in the Book of Entries of Judgments.

To reiterate, petitioner received the Entry of Judgment on 30 January 2023.

Hence, the instant Petition for Relief from Judgment was filed within the period provided for by the Revised Rules of Court for the purpose of seeking to be relieved from the Decision promulgated on 26 October 2021, and the effects of the Entry of Judgment issued by this Honorable Court on 25 January 2023.”³⁰

Petitioner also faults one of his counsels-of-record, Atty. Tejada, for his failure to file a motion for reconsideration.

³⁰ See Note 1, pp. 6-7. 

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Private respondent's arguments

Private respondent AIG counters the above-arguments of petitioner, as follows:

“19. In the case at bar, the public respondent promulgated its decision on private respondent's petition for review on October 26, 2021 ('Decision'). Said Decision was received by petitioner and private respondent on November 11, 2021 and November 15, 2021, respectively, as can be seen from court records.

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21. Thus, petitioner has 60 days from November 11, 2021 or until January 10, 2022, within which to file a petition for relief from judgment. However, it only did so on March 31, 2023.

22. Assuming for the sake of argument that petitioner only learned of the Decision when it received the Entry of Judgment on January 30, 2023, petitioner still failed to comply with the double period requirement under Rule 38 of the Rules of Court. To reiterate, the Decision was entered in the Books of Entries of Judgment on August 19, 2022. Thus, petitioner only has six (6) months from said period, or until **February 15, 2023** within which to file a petition for relief from judgment. However, petitioner only filed its Petition for Relief on March 31, 2023.”³¹

Private respondent AIG also counters, among others, that the negligence of petitioner's counsel does not constitute excusable negligence.

RULING OF THE COURT

The Court *En Banc* finds the Petition unmeritorious.

**The CTA Special Second (2nd)
Division correctly ruled that**

³¹ See Note 26, p. 58. 

**the Petition for Relief from
Judgment was filed out of
time**

Rule 38, Sec. 3 of the Revised Rules of Court (RROC) provides:

Section 3. Time for filing petition; contents and verification. — A petition provided for in either of the preceding sections of this Rule must be verified, filed **within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken**, and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

In *Commissioner of Internal Revenue v. Yi Wine Club, Inc.*,³² the Supreme Court explained the double period under the above-quoted rule, as follows:

“The Court expounded on the foregoing provision in *Quelnan v. VHF Philippines* as follows:

Clear it is from the above that a petition for relief from judgment must be filed within: (a) 60 days from knowledge of judgment, order or other proceedings to be set aside; and (b) six (6) months from entry of such judgment, order or other proceeding. These two periods **must concur**. Both periods are also **not extendible and never interrupted. Strict compliance** with these periods stems from the equitable character and nature of the petition for relief. Indeed, relief is allowed only in exceptional cases as when there is no other available or adequate remedy. As it were, a petition for relief is actually the "last chance" given by law to litigants to question a final

³² G.R. No. 250698, November 23, 2021. 

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judgment or order. And **failure to avail of such 'last chance' within the grace period fixed by the Rules is fatal.**

In *Lasam v. Philippine National Bank*, the Court further emphasizes strict compliance with the reglementary periods for filing a petition for relief:

x x x [A]s an equitable remedy, strict compliance with the applicable reglementary periods for its filing must be satisfactorily shown because a petition for relief from judgment is a **final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order, or proceeding must, at some definite time, attain finality in order to put an end to litigation.** As such, it is incumbent upon the petitioner to show that the petition was filed within its reglementary periods, otherwise, the petition may be dismissed outright.

The Court reiterates that the two time periods mentioned under Rule 38, Sec. 3 of the Rules of Court — to wit: (a) 60 days from knowledge of the judgment, order, or proceeding to be set aside and (b) six (6) months from entry of such judgment, order or other proceeding — must concur. The two time periods cannot be extended and interrupted. They are for strict compliance and failure to comply with either or both of them will be fatal to the petition for relief.

In this case, the CIR failed to show compliance with both time periods.

The CIR's counsel, Atty. Castillo-Lim, merely alleged that she had found out about the Resolution dated December 15, 2017 of the CTA First Division denying the CIR's motion for reconsideration of the Decision dated August 4, 2017 when the new Chief of the BIR Litigation Division requested for an inventory of the cases assigned to her. Yet Atty. Castillo-Lim did not state a specific date when she had acquired actual knowledge of the Resolution dated December 15, 2017 of the CTA First Division. 

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This would have been the date from which the first time period, *i.e.*, 60 days from knowledge of the judgment, order, or proceeding, would have been reckoned. Without establishing the reckoning date for the 60-day time period, then the CIR could not assert compliance with the same.

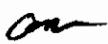
Moreover, the undisputed facts show that the CIR's petition for relief from judgment was filed way beyond the second time period, that is, six (6) months from entry of judgment, order, or proceeding. Entry of judgment of the Decision dated August 4, 2017 of the CTA First Division was made on **January 5, 2018**. The CIR's petition for relief from judgment was filed on **October 31, 2018**, more than **nine (9) months** after the entry of judgment.”(*Citations omitted*)

Here, petitioner alleges that they only had knowledge of the decision on January 30, 2023³³ when they received a copy of the Entry of Judgment. Counting sixty (60) days therefrom, petitioner had until March 31, 2023 to satisfy the sixty (60)-day period required under Rule 38, Sec. 3 of the RROC, *i.e.*, (sixty) 60 days from knowledge of the judgment, order, or proceeding.

However, petitioner wrongfully counted the six (6)-month period from the same date, or on January 30, 2023, when he received a copy of the Entry of Judgment.

Rule 14, Section 6 of the 2005 Revised Rules of the CTA (RRCTA), as amended, states that:

“SEC. 6. *Entry of judgment and final resolution.*- If no appeal or motion for reconsideration or new trial is filed within the time provided in these Rules, the Clerk of Court shall forthwith enter the judgment or final resolution in the book of judgment. **The date when the judgment or final resolution become executory shall be deemed the date of its entry.** The entry shall contain the dispositive part of the judgment or final resolution and shall be signed by the Clerk of Court, with a certification that such

³³ See Note 17. 

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judgment or resolution has become final and executory.” (*Emphasis supplied*)

Based on records, the Decision³⁴ of the CTA Second (2nd) Division dated October 26, 2021 became final and executory on August 19, 2022. Under Rule 14, Section 6 of the 2005 RRCTA, as amended, the date when the judgment or final resolution become executory shall be deemed the date of its entry. Thus, considering that the said Decision became final and executory on August 19, 2022, the same date shall be deemed the date of its entry.

Counting six (6) months from August 19, 2022, petitioner had until February 15, 2023 to satisfy the six (6)-month period required under Rule 38, Sec. 3 of the RROC, *i.e.*, (six) 6 months from entry of such judgment, order or other proceeding.

Considering that petitioner failed to satisfy the double period requirement under Rule 38, Section 3 of the RROC, *i.e.*, petitioner filed the Petition for Relief from Judgment only on March 31, 2023 which is beyond six (6) months from entry of judgment, the CTA Special Second (2nd) Division correctly ruled that the said petition was filed out of time.

Likewise, pursuant to the *Yi Wine* case, petitioner’s failure to comply with the double period is jurisdictional and not merely technical or procedural. This is because a petition for relief from judgment is an exception to the public policy of immutability of final judgments.³⁵

**Petitioner failed to support
with valid grounds his
Petition for Relief from
Judgment**

In this regard, petitioner faults one of his counsels, Atty. Tejada, for his failure to timely file his motion for reconsideration before the Court in Division.

Rule 38, Sec. 1 of the RROC provides:

³⁴ See Note 5.

³⁵ See Note 32, citing *Madarang v. Spouses Morales*, 735 Phil. 632, 640 (2014). *on*

“Section 1. *Petition for Relief from judgment, order, or other proceedings.* – When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.”

In *Rogelio Guevarra and Edgardo Bantugan v. Spouses Engracio and Claudia Bautista, Jesus Danao and Cecilia Lacson*,³⁶ the Supreme Court expounded on excusable negligence as a ground for a Petition for Relief from Judgment, as follows:

“Unfortunately for the petitioners, negligence, to be ‘excusable’, must be such that ordinary diligence and prudence could not have guarded against it. Their counsel’s oversight can hardly be characterized as excusable, much less unavoidable. It is settled that clients are bound by the mistakes, negligence and omission of their counsel. While, exceptionally, the client may be excused from the failure of counsel, the circumstances obtaining in the present case do not convince this Court to take exception.

To strengthen their claim for relief from judgment, petitioners relied on their alleged meritorious defense, thereby focusing mainly on the grounds warranting the reversal of the January 5, 1996 Decision. We would like to emphasize at this point that fraud, accident, mistake, or excusable negligence should first be established before relief from judgment can be granted. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own (or that of his counsel) negligence; otherwise, the petition for relief can be used to revive the right to appeal which had been lost through inexcusable negligence.

As held in *Insular Life Savings & Trust Co. v. Spouses Runes*, relief cannot be granted on the flimsy

³⁶ G.R. No. 148435, November 28, 2008. 

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excuse that the failure to appeal was due to the neglect of the petitioners' counsel. Otherwise, all that a defeated party has to do to salvage his case would be to claim neglect or mistake on the part of his counsel as a ground for reversing the adverse judgment, and there would then be no end to litigation, as every shortcoming of counsel could be the subject of challenge by his client.”(Citations omitted)

Similarly, in *Kenneth C. Duremdes v. Caroline G. Jorilla, et al.*,³⁷ the Supreme Court explained that:

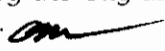
“Excusable negligence as a ground for a petition for relief requires that the negligence be so gross ‘that ordinary diligence and prudence could not have guarded against it.’ This excusable negligence must also be imputable to the party-litigant and not to his or her counsel whose negligence binds his or her client. The binding effect of counsel's negligence ensures against the resulting uncertainty and tentativeness of proceedings if clients were allowed to merely disown their counsels' conduct.

Nevertheless, this court has relaxed this rule on several occasions such as: ‘(1) where [the] reckless or gross negligence of counsel deprives the client of due process of law; (2) when [the rule's] application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require.’ Certainly, excusable negligence must be proven.”³⁸

As found by the CTA Special Second (2nd) Division, Atty. Tejada's alleged neglect in handling the case is not tantamount to excusable neglect as a ground under Section 1, Rule 38 of the RROC. Thus:

“Again, Atty. Tejada's lapses do not amount to ‘excusable negligence.’

³⁷ G.R. No. 234491, February 26, 2020.

³⁸ *Id.*, citing *City of Dagupan, represented by the City Mayor Benjamin S. Lim v. Ester F. Maramba*, G.R. No. 174411, July 2, 2014. 

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In the case of *Insular Life Savings and Trust Company v. Spouses Felix Mateo Runes, Jr., et al.*, the Supreme Court emphasized that clients are bound by the mistakes not only of the handling lawyer but also of the counsel of record (usually a firm or an office):

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In this case, it is undisputed that the petitioner's notice of appeal was filed out of time and the denial of its petition for relief from judgment by the RTC was upon its finding that the ground relied upon by the petitioner was not within the contemplation of Rule 38 of the 1997 Rules of Court. The petitioner anchored its petition for relief from judgment on Atty. Rodriguez-Ganitano's "excusable negligence." At the time, Atty. Rodriguez-Ganitano was distraught on account of her father's death and had to attend to several family matters resulting in her failure to seasonably appeal and pay the required appellate docket and other legal fees.

Unfortunately for the petitioner, **negligence, to be 'excusable,' must be one which ordinary diligence and prudence could not have guarded against. Atty. Rodriguez-Ganitano's omission could hardly be characterized as excusable, much less unavoidable. As correctly pointed out by the CA, the petitioner's counsel of record at the proceedings in the RTC was the Bihis Law Offices, of which Atty. Rodriguez-Ganitano was an associate. When she was indisposed, any one of the partners or associates of the Bihis Law Offices should have filed the notice of appeal as well as paid the appellate docket and other legal fees on time. The failure of the Bihis Law Offices to do so binds the petitioner. It is settled that clients are bound by the mistakes, negligence and omission of their counsel. While, exceptionally, the client may be excused from the failure of counsel, the circumstances obtaining in the present case, as earlier discussed, do not convince this Court to take exception.** 

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Applying the foregoing and as pointed out in the assailed Resolution, the instant case is or was not being handled by Atty. Tejada alone. The case records bear that other lawyers, namely: Attys. Felix Paul R. Velasco III, Sylvia R. Alma Jose and Ayesha Hania B. Guiling-Matanog are his co-counsels. Thus, if respondent was indeed aware of Atty. Tejada's frequent absences prior to May 2022, then he or she should have advised the co-counsels to monitor and assume the handling of the case."

Considering the foregoing, the Court *En Banc* finds no reason to deviate from the ruling of the CTA Special Second (2nd) Division. Hence, the denial of the present petition is in order.

WHEREFORE, the instant Petition for Certiorari Under Rule 65 is **DISMISSED**.

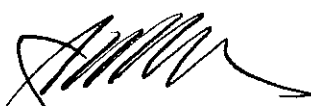
SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

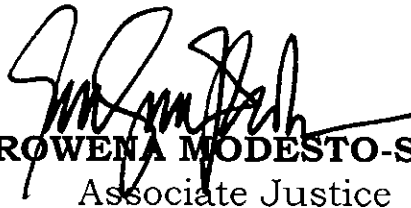
(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

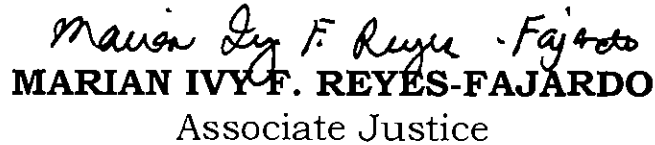
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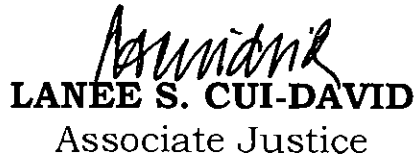
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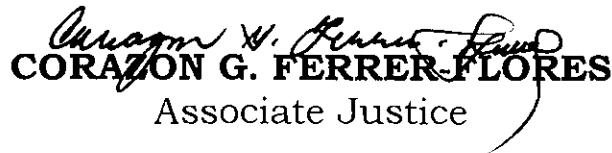
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice



HENRY S. ANGELES
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

