

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

EN BANC

**PEOPLE OF THE
PHILIPPINES,**
Petitioner,

CTA *EB* CRIM. NO. 089
(CTA Crim Case Nos. O-690
& O-691)

- versus -

**RONNEL LAMPA DE
GUZMAN (LUCKY SEA
TRADING),**
Respondent.

X-----X

**RONNEL LAMPA DE
GUZMAN (LUCKY SEA
TRADING),**
Petitioner,

CTA *EB* CRIM. NO. 092
(CTA Crim Case Nos. O-690
& O-691)

Present:

- versus -

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

**PEOPLE OF THE
PHILIPPINES,**
Respondent.

Promulgated:

OCT 03 2023

X-----X

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* are *Petitions for Review* filed by the People of the Philippines,¹ represented by the Bureau of

¹ Docket, CTA *En Banc* (*EB*) Crim No. 089, pp. 1-21.

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Internal Revenue (BIR), and Ronnel Lampa De Guzman² assailing the Decision dated June 9, 2021,³ and the Resolution dated February 21, 2022,⁴ rendered by this Court’s First Division (Court in Division) in CTA Crim. Case Nos. O-690 and O-691, entitled “*People of the Philippines v. Ronnel Lampa De Guzman (Lucky Sea Trading), et seq.*”, for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, the dispositive portions of which read:

Assailed Decision dated June 9, 2021:

WHEREFORE, premises considered, the Court rules as follows:

1. In CTA Crim. Case No. O-690, accused **RONNEL LAMPA DE GUZMAN** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2012 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to ten (10) years as maximum, and **ORDERED** to pay a fine in the amount of Php10,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the 1997 NIRC, as amended.

2. In CTA Crim. Case No. O-691, accused **RONNEL LAMPA DE GUZMAN** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the 1997 NIRC, as amended, for taxable year 2013 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to ten (10) years as maximum, and **ORDERED** to pay a fine in the amount of Php10,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the 1997 NIRC, as amended.

SO ORDERED.

Assailed Resolution dated February 21, 2022:

WHEREFORE, premises considered, plaintiff’s *Motion for Partial Reconsideration (of the Decision Promulgated on June 9, 2021)* and accused’s *Motion for Reconsideration* are hereby **DENIED**. Accordingly, the Assailed Decision dated June 9, 2021 is hereby **AFFIRMED**.

SO ORDERED.



² Docket, CTA *EB* Crim No. 092, pp. 21-34.

³ Docket, CTA *EB* Crim No. 089, pp. 24-51; Docket, CTA *EB* Crim No. 092, pp. 43-70.

⁴ Docket, CTA *EB* Crim No. 089, pp. 65-70; Docket, CTA *EB* Crim No. 092, pp. 36-41.

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THE PARTIES

The People of the Philippines (the People) is represented by the BIR acting as Special Prosecutor duly deputized by the Department of Justice (DOJ), with office address at Room 704, BIR National Office Building, BIR Road, Diliman, Quezon City.⁵

Ronnel Lampa De Guzman (De Guzman) is the accused in CTA Crim. Case Nos. O-690 and O-691 and is being represented by the law firm of Bartolome, Salazar & Partners, through Atty. Jan Michael R. Jongko with office address at Unit 2003, Taipan Place, Ortigas Center, Pasig City 1605, Metro Manila.⁶

THE FACTS

The factual antecedents, as narrated by the Court in Division, are as follows:

Indicted is Ronnel Lampa De Guzman under CTA Criminal Case Nos. O-690 and O-691 for violation of Section 254, in relation to Section 255 of the 1997 NIRC, as amended, for his willful failure to file his ITRs for taxable years 2012 and 2013, allegedly committed as follows:

CTA Crim. Case No. O-690

“That on or before April 15, 2013, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused a registered taxpayer and the sole proprietor of LUCKY SEA TRADING, having sources of income in the amount of Thirty Three Million Two Hundred fifteen Thousand Eight Hundred Sixteen (PHP33,215,860.00) during the taxable year 2012, required by law and regulations to pay income tax and make return, did then and there, willfully unlawfully and feloniously fail to file his Income Tax Return (ITR) with the Bureau of Internal Revenue for taxable year 2012, to the damage and prejudice of the Government in terms of Basic tax in the amount of Ten Million Five Hundred Seventy Eight Thousand Seventy Five Pesos (PHP10,578,075.00).



⁵ Par. 7, Petition for Review, Docket, CTA *EB* Crim No. 089, p. 3

⁶ Par. 8, *id.*, p. 3.

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CONTRARY TO LAW.”

CTA Crim. Case No. O-691

“That on or before April 15, 2014 in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused a registered taxpayer and the sole proprietor of LUCKY SEA TRADING, having sources of income in the amount of Six Hundred Sixty Nine Million Four Hundred Four Thousand Nine Hundred Forty Six Pesos (PHP669,404,946.00) during the taxable year 2013, required by law and regulations to pay income tax and make return, did then and there, willfully unlawfully and feloniously fail to file his Income Tax Return (ITR) with the Bureau of Internal Revenue for taxable year 2013, to the damage and prejudice of the Government in terms of basic tax in the amount of PHP Two Hundred Fourteen Million One Hundred Fifty Eight Thousand Five Hundred Eighty Two Pesos and 72/100 (PHP214,158,582.72).

CONTRARY TO LAW.”

However, the Court found discrepancies in the Informations filed by the prosecutors under CTA Crim. Case Nos. O-690 and O-691, hence, it was directed to correct each of said Information.

The prosecution then moved to amend the two (2) Informations on May 17, 2019 for CTA Crim. Case No. O-690 and CTA Crim. Case No. O-691 which were both granted and admitted by this Court on June 4, 2019. The Amended Informations stated the following:

CTA Crim. Case No. O-690

“That on or before April 15, 2013 in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused a registered taxpayer and the sole proprietor of LUCKY SEA TRADING, having sources of income in the amount of Thirty Three Million Two Hundred Fifteen Thousand Eight Hundred Sixty Pesos (PHP33,215,860.00) during the taxable year 2012, required by law and regulations to pay income tax and make return, did then and there, willfully unlawfully and feloniously fail to file his Income Tax Return (ITR) with the Bureau of Internal Revenue for taxable year 2012, in terms



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of basic tax in the amount of Ten Million Five Hundred Seventy Eight Thousand Seventy Five and 20/100 Pesos (PHP10,578,075.20) exclusive of penalties, surcharges, and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.”

CTA Crim. Case No. O-691

“That on or before April 15, 2013 in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and the sole proprietor of LUCKY SEA TRADING, having sources of income in the amount of Six Hundred Sixty Nine Million Four Hundred and Four Thousand Nine Hundred Forty Six Pesos (Php669,404,946.00) during the taxable year 2013, required by law and regulations to pay income tax and make return, did then and there, willfully unlawfully and feloniously fail to file his Income Tax Return (ITR) with the Bureau of Internal Revenue for taxable year 2013, in terms of basic tax in the amount of Two Hundred Fourteen Million One Hundred Fifty Eight Thousand Five Hundred Eighty Two and 72/100 Pesos (PHP214,158,582.72) exclusive of penalties, surcharges, and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.”

After careful consideration of the allegations in the two (2) Amended Informations and the attachments thereto, the Court found probable cause for the issuance of a warrant of arrest against accused De Guzman under CTA Crim Case Nos. O-690 and O-691 under Resolutions dated June 4, 2019.

Thus, Warrants of Arrest (WOAs) against the accused were issued on July 10, 2019 and July 18, 2019 for CTA Crim. Case Nos. O-690 and O-691, respectively.

On July 24, 2019, accused De Guzman was arrested by virtue of the abovementioned WOAs by the operatives of Manila Police District, Philippine National Police. Accused De Guzman posted bail in both cases on July 25, 2019.

During his arraignment on September 11, 2019, accused pleaded Not Guilty to both crimes charged. The Pre-Trial Conference was reset on November 13, 2019.

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The prosecutor filed its Pre-Trial Brief on September 5, 2019 while the accused filed his Pre-Trial Brief on October 1, 2019. The parties filed their *Joint Stipulations* on October 19, 2019. Thus, on January 16, 2020, the Pre-Trial Order of the case was issued.

On September 1, 2020, after its presentation of evidence, the prosecutor filed its Formal Offer of Evidence[.] ...

... ..

Except for Exhibit P-17 which was not admitted because the document described in the Formal Offer of Evidence and the document identified by prosecution’s witness do not correspond with the document duly marked and submitted to the Court, all other exhibits were admitted.

On the other hand, accused De Guzman did not offer any documentary evidence but only his bare testimony with the Court. Accused de Guzman mainly denied that the business entity, Lucky Sea Trading, was his and alleged that the registration of said business was made by another person as contained in his Judicial affidavit, to wit:

... ..

On December 16, 2020, the prosecution filed Memorandum while accused De Guzman filed his Memorandum on December 17, 2020. Thus, on January 14, 2020, the case was submitted for decision.

On June 9, 2021, the Court in Division promulgated the assailed Decision.⁸

On July 6, 2021, De Guzman filed his *Motion for Reconsideration*,⁹ with the *People’s Comment (to the Motion for Reconsideration of Accused Ronnel Lampa De Guzman dated June 27, 2021)*¹⁰ filed through electronic mail on October 11, 2021, and was personally served to the Court on October 20, 2021.

⁷ Complaint-Affidavit dated February 4, 2016 of Angela Marie Simpfit-De Leon, Mahley B. Matanog, and Arlene F. Grageda, Division Docket, CTA Crim. No. O-690, p. 36.

⁸ *Supra*, note 2.

⁹ Division Docket, CTA Crim. Case O-690, pp. 609-619.

¹⁰ *Id.*, pp. 643-650.

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On July 8, 2021, the People filed its *Motion for Partial Reconsideration (of the Decision Promulgated on June 9, 2021)*,¹¹ with De Guzman's *Comment/Opposition*¹² filed on November 10, 2021.

On February 21, 2022, the Court in Division rendered the assailed Resolution¹³ denying the parties' respective motions for reconsideration. Undaunted, the People and De Guzman filed the present Petitions for Review on March 15, 2022, and April 7, 2022, respectively.

On April 18, 2022, the Court *En Banc* consolidated CTA *EB* Crim. No. 092 with CTA *EB* Crim. No. 089, the case bearing the lower docket number, pursuant to Section 1, Rule 31 of the Revised Rules of Court.¹⁴

On July 5, 2022, the Court *En Banc* issued a Resolution¹⁵ requiring the People to show proof of compliance with the noted deficiencies in CTA *EB* Crim. No. 089 and De Guzman to manifest the correct name of the petitioner in the caption of the case in CTA *EB* Crim. No. 092, within five days from notice; and requiring both parties to file a comment on the respective petitions in CTA *EB* Crim. No. 089 and CTA *EB* Crim. No. 092.

The People filed its *Manifestation with Compliance*¹⁶ on July 11, 2022, and De Guzman filed his *Manifestation*¹⁷ on July 14, 2022.

On July 22, 2022, De Guzman filed his *Comment*¹⁸ while the People filed its *Comment (on the Petition for Review of Petitioner Ronnel Lampa De Guzman dated March 30, 2022)*

On October 4, 2022, the Court *En Banc* submitted the consolidated cases for decision.¹⁹

¹¹ *Id.*, pp. 620-630.

¹² *Id.*, pp. 652-656.

¹³ *Supra*, note 3.

¹⁴ Minute Resolution, Docket, CTA *EB* Crim. No. 089, p. 81.

¹⁵ Docket, CTA *EB* Crim. No. 089, pp. 83-85.

¹⁶ *Id.*, pp. 86-89.

¹⁷ *Id.*, pp. 90-91.

¹⁸ Docket, CTA *EB* Crim. No. 089, pp. 92-96.

¹⁹ Resolution, Docket, CTA *EB* Crim. No. 089, pp. 107-109.

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THE ISSUES

***EB* Crim. No. 089²⁰**

The People raises the lone error allegedly committed by the Court in Division as follows:

THE CTA FIRST DIVISION ERRED IN NOT IMPOSING CIVIL LIABILITY WHEN RESPONDENT DE GUZMAN WAS FOUND GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 255 OF NIRC OF 1997.

***EB* Crim. No. 092²¹**

Meanwhile, De Guzman sets forth the following issues for the Court's resolution:

WHETHER OR NOT THE ACCUSED IS GUILTY BEYOND A [*sic*] REASONABLE DOUBT OF THE CRIME CHARGED.

THE HON. 1ST DIVISION ERRED IN FINDING THAT THE PETITIONER-ACCUSED IS REQUIRED TO FILE AN INCOME TAX RETURN OF [*sic*] THE YEARS 2012 AND 2013.

THE HON. 1ST DIVISION ERRED IN FINDING THAT THE PETITIONER-ACCUSED WILLFULLY FAILED TO FILE INCOME TAX RETURN FOR THE YEAR [*sic*] 2012 AND 2013.

The above issues raised by the parties can be concisely summed up into one basic question:

Whether the Court in Division erred in finding De Guzman guilty beyond reasonable doubt of violating Section 255 of the NIRC of 1997, as amended, for taxable years (TYs) 2012 and 2013, without civil liability.

***EB* Crim. No. 089**

The People's arguments:

In its Petition for Review²² under CTA *EB* Crim. No. 089, the People argues that the Court in Division erred in not imposing civil liability on De Guzman when he was found guilty beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended, considering that a Letter of Authority

²⁰ Docket, CTA *EB* Crim. No. 089, p. 9.

²¹ Docket, CTA *EB* Crim. No. 092, p. 25.

²² *Supra*, note 1.

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(LOA), Preliminary Assessment Notice (PAN) and Formal Letter of Demand and Assessment Notices (FLD/FAN) were issued and served to De Guzman.

De Guzman's counter-arguments:

In his Comment, De Guzman contends that the obligation to pay tax is not deemed instituted in a criminal case citing *Gaw, Jr. v. Commissioner of Internal Revenue (Gaw)*.²³ De Guzman adds that the assessment is based on speculation and conjectures, which equates to a void assessment.

EB Crim. No. 092

De Guzman's arguments:

In his Petition for Review²⁴ under CTA *EB* Crim. No. 092, De Guzman argues that the Court in Division erred in finding that he is required to file an Income Tax Return (ITR) for TYs 2012 and 2013 and that he willfully failed to file the same. Further, his inaction to do so borders only on negligence and not willfulness citing *People v. Judy Anne Santos*.²⁵

The People's counter-arguments:

In its Comment, the People disputes De Guzman's bare denial of his participation in the registration and ownership of Lucky Sea Trading in the presence of the Department of Trade and Industry (DTI) Certification and BIR Certificate of Registration and Integrated Tax System (ITS) print-out stating that he is the proprietor of Lucky Sea Trading.

The People insists that all the elements of the offense charged were proven beyond reasonable doubt. Sadly, De Guzman merely offered his testimony containing his denial as evidence. Without any other evidence offered by De Guzman to overthrow the *prima facie* case against him, the People concludes that it was able to discharge its function of establishing De Guzman's guilt beyond reasonable doubt.



²³ G.R. No. 222837, July 23, 2018.
²⁴ *Supra*, note 2.
²⁵ CTA Crim. Case No. O-012, January 16, 2013.

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THE COURT *EN BANC*'S RULING

We deny both Petitions.

The instant petitions were timely filed.

Before delving into the merits of the consolidated cases, the Court *En Banc* shall first determine the timeliness of the filing of the present petitions.

Section 9(b), Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

SEC. 9. *Appeal; period to appeal. – ...*

(b) An **appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days** from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. (*Emphasis supplied*)

Records show that the People received the assailed Resolution on February 28, 2022,²⁶ while De Guzman received the same on March 9, 2022.²⁷ Thus, the People and De Guzman had fifteen (15) days from said dates, or until March 15, 2022, and March 24, 2022, respectively, to file their petitions for review before the Court *En Banc*.

On March 15, 2022, the People filed its *Petition for Review*;²⁸ hence, timely filed.

Meanwhile, De Guzman filed a *Motion for Extension (To File Verified Petition for Review under Rule 43 of the Revised Rules of Court)*,²⁹ asking for an additional fifteen (15) days from March 24, 2022, or until April 8, 2022, to file a petition for review. Said motion was granted in the Minute Resolution³⁰ dated March 30, 2022.

²⁶ Division Docket, CTA Crim. Case No. O-690, p. 659.

²⁷ *Id.*, p. 659-a.

²⁸ *Supra*, note 1.

²⁹ Docket, CTA *EB* Crim No. 092, pp. 1-4.

³⁰ *Id.*, p. 20.

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On April 7, 2022, De Guzman filed his *Petition for Review*.³¹ Considering that his petition was filed within the extended period granted by the Court, the same was timely filed.

Having settled that the instant petitions were timely filed, We likewise rule that the Court has the requisite jurisdiction to take cognizance of the same.

Now, on the merits.

The Court in Division did not err in convicting De Guzman for violation of Section 255 of the NIRC of 1997, as amended.

Relevant to the resolution of this case is Section 255 of the NIRC of 1997, as amended, which reads:

SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withheld and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — **Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (Emphasis supplied)**

Indeed, to sustain a conviction of the crime of *Willful Failure to File Return* under Section 255 of the NIRC of 1997, as amended, the following elements must be established by the prosecution:³²

(1) **The taxpayer is required to pay any tax, make a return, keep any record, or supply correct and accurate information or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations;**

³¹ *Supra*, note 2.

³² *Kingsam Express, Incorporation v. People*, G.R. No. 254086 (Notice), September 7, 2022; *Suarez v. People*, G.R. No. 253429, October 6, 2021.

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(2) **The taxpayer failed to do so**; and

(3) Such failure is **willful**.


De Guzman insists that he was not required to make and file an ITR and that he did not willfully fail to file a return.

We disagree.

As discussed by the Court in Division in the assailed Decision, the prosecution was able to establish and prove the above-enumerated elements to the satisfaction of the Court.

As to the *first* element, it was established from the DTI Certification, the BIR Certificate of Registration, and the BIR ITS Print-Out that De Guzman is a *sole proprietor* duly registered and operating under the trade name “Lucky Sea Trading”. De Guzman failed to rebut the existence and authenticity of the said certificates and registration record showing his business details when they were formally offered as evidence by the BIR.³³

A taxpayer’s duty to file an annual income tax return is rooted in Sections 51³⁴ and 74³⁵ of the NIRC of 1997, as

³³ Comment/Opposition dated September 11, 2019, filed on September 14, 2020, Docket, CTA Crim No. O-690, pp. 512-513. 

³⁴ SEC. 51. *Individual Return*. —

(A) Requirements. —

(1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:

(a) Every Filipino citizen residing in the Philippines;

xxx xxx xxx

(4) The income tax return shall be filed in duplicate by the following persons:

(a) A resident citizen — on his income from all sources;

xxx xxx xxx

(B) Where to File. — Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.

(C) When to File. —

(1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.

xxx xxx xxx

³⁵ SEC. 74. *Declaration of Income Tax for Individuals*. —

(A) In General. — Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25 (A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. In general, ‘self-employment income’ consists of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.”

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amended. Thus, the Court in Division correctly found that De Guzman was mandated by law to file his ITRs for TYs 2012 and 2013, whether he obtained an income or not as *a sole proprietor*, citing Sections 51 and 74 of the NIRC of 1997, as amended.

Anent the *second* element, it was established from the Certification signed by Carmelita C. Glorioso, then Chief of Collection Section of Revenue District Office (RDO) No. 33 – Intramuros, Manila which has jurisdiction over the business of De Guzman, that based on the RDO’s records and the BIR ITS Print-Out, De Guzman, who was operating under the business name Lucky Sea Trading, had no record of Annual ITRs, Quarterly ITRs, Monthly and Quarterly VAT Returns and Monthly Withholding Tax Returns filed for TYs 2012 and 2013.

In stark contrast to the evidence presented by the prosecution, De Guzman did not dispute the Certification. He also did not submit any proof of filing of ITRs for TYs 2012 and 2013. As found by the Court in Division, De Guzman did not offer any documentary evidence but only his bare testimony denying ownership of the business Lucky Sea Trading.

Finally, as regards the *third* element, De Guzman negated the presence of willfulness by invoking only *negligence* in not taking affirmative action to clear his name before the DTI, BIR, and BOC, and not checking all his statutory obligations, which includes the filing of an ITR for a business he allegedly knows nothing about.³⁶

Contrariwise, De Guzman’s failure to take affirmative action to inform the BIR and DTI about his lack of knowledge or participation in the registration of Lucky Sea Trading with the said agencies immediately upon learning of the tax assessment notices against him³⁷ convinces the Court to lend no credence to De Guzman’s defense of negligence. As such, being the sole proprietor of Lucky Sea Trading, De Guzman is aware of his duty to file tax returns and pay taxes, if any.

Curiously, to refute his ownership of Lucky Sea Trading, De Guzman claimed that he was only receiving five hundred pesos as his weekly salary for five years. This admission was found to be incredulous by the Court in Division, which the Court agreed with. It is peculiar that De Guzman accepted a

³⁶ Par. 34, Petition for Review, Docket, CTA *EB* Crim No. 092, p. 31

³⁷ TSN, Hearing dated November 18, 2020, pp. 9-10.

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lower than the daily minimum wage for five years despite being a college graduate.

Thus, We are one with the Court in Division in finding that De Guzman's failure to file the ITRs for TY 2012 and 2013 was *willful, viz.:*

In *People of the Philippines v. Sixta Lee Go*, "willfulness was also defined as follows:

"Willfulness' in tax crimes has been simply defined as:

"Willful in the tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown."

Further, it is also stated that "willfulness" is a state of mind that may be inferred from the circumstances of the case. Thus, proof of willfulness may be, and usually is, shown by circumstantial evidence alone.

During the trial, the accused merely denied that he owns Lucky Sea Trading and that it was another person, Ms. Ana Beloria, his employer, who was the one who caused his BIR registration as well as the business name registration in the DTI. No corroborative evidence other than his testimony was presented by the accused.

Such denial by the accused without a corroborative evidence is considered an alibi, which has long been considered weak and unreliable as held in *People of the Philippines v. King Rex A. Ambatang*:

"As against these, accused-appellant offered denial and alibi as defenses, which jurisprudence has long considered weak and unreliable . . ."

After taking a second hard look at the arguments of the parties, and the documentary and testimonial evidence presented before, and admitted by, the Court in Division, the Court *En Banc* finds that the prosecution had established the guilt of the accused beyond reasonable doubt of the crime charged in the instant consolidated cases. Accordingly, We affirm petitioner's conviction for violation of Section 255 of the NIRC of 1997, as amended.



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With regard to the penalty, the same is consistent with that imposed under Section 255 of the NIRC of 1997, as amended. Hence, We likewise affirm the same.

The Court in Division did not err in absolving De Guzman from any civil liability for taxes and penalties.

The People insists that there is basis to determine the civil liability of De Guzman as the LOA and PAN were served to him; and that the filing of the criminal action against De Guzman carries with it the filing of civil action for the recovery of civil liability for taxes and penalties.

The People also attached a copy of the FLD/FAN allegedly served to De Guzman, who did not file a protest thereto, making the assessment final, executory, and demandable.

The People adds that the testimony of the revenue officers who conducted the tax investigation against De Guzman, as well as the documentary evidence presented, have greater weight of evidence for the imposition of civil liability.

To refute his civil liability, De Guzman invokes *Gaw*, which declared that Rule 111, Section 1(a) of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime and not an obligation that is created by law.

Gaw recognizes that “what is deemed instituted with the criminal action is only the government’s recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is *not* deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.”

Gaw also cited the 1967 case of *Republic v. Patanao*,³⁸ where the Supreme Court explained that the NIRC of 1939 did not mandate that civil liability is deemed included in the criminal action, *viz:*

³⁸ G.R. No. L-22356, July 21, 1967.

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... [W]hile **section 73** of the National Internal Revenue Code has provided the imposition of the penalty of imprisonment or fine, or both, for refusal or neglect to pay income tax or to make a return thereof, it **failed to provide the collection of said tax in criminal proceedings**. The only civil remedies provided, for the collection of income tax, in Chapters I and II, Title IX of the Code and section 316 thereof, are distraint of goods, chattels, etc., or by judicial action, which remedies are generally exclusive in the absence of a contrary intent from the legislator. (People vs. Arnault, G.R. No. L-4288, November 20, 1952; People vs. Tierra, G.R. Nos. L-17177-17180, December 28, 1964)

When *Patanao*, a 1967 case, speaks of “*under the tax law*,” the *tax law* referred to therein was Commonwealth Act No. 466, enacted on June 15, 1939, or the NIRC of 1939. As to the jurisdiction of the CTA, the applicable law then was Republic Act (RA) No. 1125, enacted on June 16, 1954.

The NIRC of 1939 has provided the imposition of the penalty of imprisonment or fine, or both, for refusal or neglect to pay income tax or to make a return but *failed to provide the collection of said tax in criminal proceedings*.³⁹ On the other hand, RA No. 1125 *failed to provide the inclusion of the civil action for the recovery of taxes and penalties in the criminal action*.⁴⁰

However, the present tax law is different. In particular, Section 205 of the NIRC of 1997, as amended, *now* provides that the judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as **finally decided by the Commissioner**.⁴¹

³⁹ SECTION 316. Civil Remedies for the Collection of Delinquent Taxes. – The civil remedies for the collection of internal-revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be (a) by distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and (b) by judicial action. Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes.

No exemption shall be allowed against the internal-revenue taxes in any case.

⁴⁰ **Section 7. Jurisdiction.** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

- (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
- (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and
- (3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

⁴¹ The pertinent provision of the NIRC of 1939 as applied in *Gaw* (citing *Patanao*) and the present Section 205 of the NIRC of 1997, as amended, may be compared as follows:

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In the matter of the jurisdiction of the CTA to impose civil liability for taxes and penalties in the criminal case, Section 7 of the RA No. 1125, as amended by RA No. 9282,⁴² provides:

SEC. 7. *Jurisdiction.* - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

... ..

b. Jurisdiction over cases involving **criminal offenses** as herein provided:

1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code ... and other laws administered by the Bureau of Internal Revenue Any provision of law or the Rules of Court to the contrary notwithstanding, the **criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA**, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.” (*Emphasis supplied*)

CA No. 466 (NIRC of 1939)	1997 NIRC, as amended
<p>SEC. 316. <i>Civil Remedies for the Collection of Delinquent Taxes.</i> - The civil remedies for the collection of internal-revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be (a) by distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and (b) by judicial action. Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes.</p> <p>No exemption shall be allowed against the internal-revenue taxes in any case.</p>	<p style="text-align: center;">CHAPTER II CIVIL REMEDIES FOR COLLECTION OF TAXES</p> <p>SEC. 205. <i>Remedies for the Collection of Delinquent Taxes.</i> - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:</p> <p>(a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; and</p> <p>(b) By civil or criminal action.</p> <p>Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, That the remedies of distraint and levy shall not be availed of where the amount of tax involve is not more than one hundred pesos (P100).</p> <p>The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.</p> <p>... (<i>Emphasis supplied</i>)</p>

⁴² An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), enacted on April 23, 2004.

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Similarly, Section 11, Rule 9 of the RRCTA provides:

SEC. 11. *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, **the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding.** The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized. (*Emphasis supplied*)

Clearly, the filing of the criminal case before the CTA also implies the filing of the civil action for the recovery of civil liability for taxes and penalties. Correspondingly, an accused who is *convicted* of a criminal charge, like De Guzman, could be held civilly liable in the same case **when the facts established by the evidence warrant.**⁴³

Moreover, the Information filed against De Guzman need not allege that there was a final assessment notice issued against him that has become final and executory so that civil liability may be imposed against him. It is well-settled that an assessment is not necessary before a criminal charge can be filed. Section 222 of the NIRC of 1997, as amended,⁴⁴ explicitly provides that in case of failure to file a return, proceedings in court may be commenced without an assessment.⁴⁵ To allege the existence of a final assessment in the Information would greatly curtail the statutory power of the CIR to file criminal tax cases even without an assessment. However, Section 205 of the NIRC of 1997, as amended, requires that there must be a *final determination of such liability by the Commissioner.* This determination of civil liability for the payment of taxes by the Commissioner refers to a formal assessment or Final Assessment Notice.⁴⁶



⁴³ *People v. Estelita Delos Angeles*, CTA Crim. Case No. O-027, November 25, 2009.

⁴⁴ SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*

(a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment,** at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (*Emphasis supplied*)

⁴⁵ *Adamson v. Court of Appeals*, G.R. No. 120935, May 21, 2009.

⁴⁶ *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021, citing *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017. See also *Ungab v. Cusi*, G.R. No. L-41919-24 May 30, 1980, where the Supreme Court ruled that there was no need for precise computation and formal assessment in order for criminal complaints to be filed against accused.

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This is the same pronouncement by this Court, sitting *En Banc*, in *People of the Philippines v. Arceo*,⁴⁷ to wit:

There is no denying that there is no requirement for the precise computation and assessment of the tax liability before there can be a criminal prosecution under the NIRC. However, Section 205 of the NIRC of 1997, as amended, provides that “[t]he judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.” **This simply means that in order for a civil liability to be included in the judgment, it must be the final decision of the CIR — referring to a formal assessment.** (*Emphasis supplied*)

We shall now determine whether, in the present consolidated cases, the facts established by the evidence warrant the imposition of civil liability against De Guzman.

In this case, the Court in Division pointed out in the assailed Decision that the prosecution merely presented the PAN and no other subsequent notice after such issuance was served to De Guzman.⁴⁸

It bears to note that the PAN cannot be used as a basis to determine De Guzman’s civil liability since it is not the *final decision of the CIR* contemplated in Section 205 of the NIRC of 1997, as amended.

Further, the FLD dated June 23, 2020, and the FANs dated October 14, 2020,⁴⁹ that the People attached to the Petition could not be considered by the Court *En Banc* as they were not formally offered by the prosecution and admitted as evidence before the Court in Division.⁵⁰ The Court notes that the FLD dated June 23, 2020 appeared to have been issued before the prosecution rested its case and formally offered its evidence on September 1, 2020. Nonetheless, as the records reveal, the prosecution opted not to present and formally offer the said notices as evidence before the Court in Division.

⁴⁷ CTA. *EB* Crim. No. 060 (CTA Crim. Case No. O-271), July 1, 2020; *People v. Tiotangco*, CTA *EB* Crim. No. 086 (CTA Crim. Case Nos. O-602 & O-605), June 9, 2022; *People v. Active Travel and Tours, Inc.*, CTA *EB* Crim. No. 088 (CTA Crim. Case Nos. O-737 and O-738), September 22, 2022.

⁴⁸ Docket, CTA *EB* Crim No. 089, p.37.

⁴⁹ Annex “D”, *id.*, pp. 71-80.

⁵⁰ Formal Offer of Evidence dated September 1, 2020, CTA Crim. Case No. O-690, pp. 501-513.

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The Rules of Court specifically provide that evidence must be formally offered to be considered by the court. Evidence not offered is excluded in the determination of the case.⁵¹ The People likewise failed to provide any explanation as to the reason behind such failure.

As such, We reiterate that the FLD/FANs could not be considered in our disquisition at this belated stage.

Nonetheless, even if the FLD/FANs were admitted as evidence during the trial, the assessment would still fail as it was based merely on a *presumption* and lacks factual and legal basis, as correctly found by the Court in Division, *viz.:*

The testimony also of the prosecution witness, Mr. Mahleyl B. Matinog, also reveals, as admitted by him, that **the resulting assessment of their tax investigation was based merely on a presumption** that the payments made for the importation of said vehicles were income of the accused’s business **on the basis of expenditure method**, to wit:

... ..

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, the Supreme Court categorically stated that an **assessment must be based on credible evidence and should not be arbitrarily made**, to wit:

... ..

In *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation, et al.*, citing the case of *Collector of Internal Revenue vs. Alberto D. Benipayo*, the Supreme Court ruled that an assessment should not be based on **presumption but on actual facts**... (*Emphasis supplied*)

The Court *En Banc* cannot countenance an assessment based on findings that appear to have been *arbitrarily* arrived at. Although taxes are the lifeblood of the government, their assessment and collection “should be made in accordance with law as any arbitrariness will negate the very reason for government itself.”⁵²



⁵¹ *Amposta-Mortel v. People*, G.R. Nos. 220500, 220504, 220505, 220532, 220552, 220568, 220580, 220587 & 220592, February 8, 2023.

⁵² *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

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Moreover, as observed by the Court in Division, the BIR failed to serve the pertinent LOA to De Guzman. Such failure is akin to a tax audit or investigation without proper authorization which could invalidate the investigation and the PAN.⁵³

Proper service of an LOA is a due process requirement in tax assessments. The need to properly serve the LOA to the taxpayer is recognized by the BIR in Revenue Audit Memorandum Order No. 1-00,⁵⁴ Revenue Memorandum Order No. 19-2015,⁵⁵ and recently in Revenue Memorandum Circular (RMC) No. 110-2020.⁵⁶

The subject LOA⁵⁷ was not proven to have been served to De Guzman as the lower portion thereof was not signed by him nor his authorized representative. Hence, it is doubtful that De Guzman received the same.

For failure to serve the LOA to De Guzman, it is as if no LOA was issued, which renders the assessment null and void, as ruled by the Supreme Court in *Medicard Philippines v. Commissioner of Internal Revenue (Medicard)*.⁵⁸

Medicard was recognized by the BIR in RMC No. 75-2018, to wit:⁵⁹



⁵³ Docket, CTA *EB* Crim No. 089, pp. 44-45.
⁵⁴ Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), March 17, 2000. Item VIII (C)(2) provides:
2. *Serving of Letter of Authority*
2.1 On the first opportunity of the Revenue Officer to have personal contact with the taxpayer, he should present the Letter of Authority (LA) together with a copy of the Taxpayer’s Bill of Rights. The LA should be served by the Revenue Officer assigned to the case and no one else. He should have the proper identification card and should be in proper attire.
2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer’s books and records in relation to his internal revenue tax liabilities for a particular period.
2.3 A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words “Revalidated on _____” on the face of the copy of the Letter of Authority issued.
⁵⁵ BIR Audit Program, September 15, 2015. Item III (23) provides:
23. The RO assigned to the case shall present or serve the eLA to the taxpayer or his representative in accordance with Section 3.1.6 of RR No. 12-99 as amended by RR No. 18-2013.
⁵⁶ Clarifications on the Proper Modes of Service of an Electronic Letter of Authority, September 24, 2020. Items 1 and 2 provide:
1. The eLA shall be served to the taxpayer through personal service by delivering personally a copy of the eLA 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. Personal or substituted service of the eLA shall be effected by the RO assigned to the case. However, such service may also be made by any BIR employee duly authorized for the purpose.
2. In case personal service is not possible, the eLA shall be served either by substituted service or by mail. However, substituted service can only be resorted to when the party is not present at the registered or known address. ...
⁵⁷ Exhibit “P-8”, Docket, CTA Crim. Case No. O-690, p. 54.
⁵⁸ G.R. No. 222743, April 5, 2017.
⁵⁹ The Mandatory Statutory Requirement and Function of a Letter of Authority, September 5, 2018.

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This Circular is being issued to highlight the doctrinal rule enunciated by the Supreme Court in the case of *“Medicard Philippines, Inc. vs. Commissioner of Internal Revenue”* (G.R. No. 222743, 05 April 2017) on the mandatory statutory requirement of a Letter of Authority (LOA), for the guidance of all concerned, particularly internal revenue officers tasked with assessment and collection functions and review of disputed assessments.

The judicial ruling, invoking a specific statutory mandate, states that no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, through an LOA. The concept of an LOA is therefore clear and unequivocal. **Any tax assessment issued without an LOA is a violation of the taxpayer’s right to due process and is therefore “inescapably void.”** (*Emphasis supplied*)

For failing to observe the prescribed procedure in serving the LOA, De Guzman was denied his right to due process rendering the assessment null and void.

In *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*,⁶⁰ the Supreme Court ruled that taxes cannot be collected without complying with due process, to wit:

It is an elementary rule enshrined in the 1987 Constitution that **no person shall be deprived of property without due process of law**. 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.** (*Emphasis supplied*)

The importance of the revenue officer’s authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The absence of a LOA itself results in a void assessment. Being a void assessment, the same bears no fruit.⁶¹

⁶⁰ G.R. No. 198677, November 26, 2014.

⁶¹ See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

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Considering that the assessment is void, there can be no *final assessment or decision of the CIR* to speak of from which De Guzman's civil liability for taxes and penalties could be derived pursuant to the penultimate paragraph of Section 205 of the NIRC of 1997, as amended.

In fine, the Court finds no cogent reason to reverse the findings and conclusions of the Court in Division.

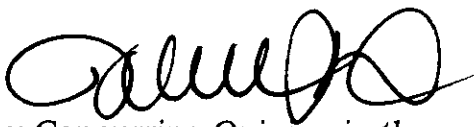
WHEREFORE, the *Petition for Review* filed by the Bureau of Internal Revenue in CTA EB Crim. No. 089, and the *Petition for Review* filed by Ronnel Lampa De Guzman in CTA EB Crim. No. 092, are **DENIED** for lack of merit.

Accordingly, the Decision dated June 9, 2021, and the Resolution dated February 21, 2022, rendered by this Court's First Division in CTA Crim. Case Nos. O-690 and O-691 are **AFFIRMED**.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:


(*I reiterate my Concurring Opinion in the assailed Decision*)
ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


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JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE
HENRY SUMAWAY ANGELES
Associate Justice



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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 cases were assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO

Presiding Justice

