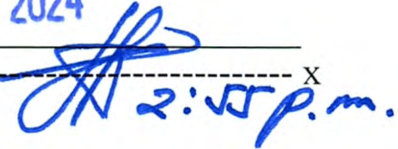
REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2781** (CTA Case No. 9832)
	Present:
-*versus*-	**DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
RCBC SAVINGS BANK, INC., *Respondent.*	Promulgated: FEB 12 2024



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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed by petitioner Commissioner of Internal Revenue ("CIR") on 28 July 2023, with respondent's Comment (Re: Petitioner CIR's 'Petition for Review' dated July 28, 2023),[2] filed by respondent RCBC Savings Bank, Inc. ("RCBC") on 22 August 2023. The Petition assails the Decision, dated 22 November 2022[3] ("Assailed Decision"), rendered by the Court of Tax Appeals ("CTA") First Division ("Court in Division"), and Resolution, dated 22 June 2023[4] ("Assailed Resolution"), rendered by the CTA Special First Division.

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[1] *EB* Records, pp. 7-21.
[2] *Id.*, pp. 64-75.
[3] *Id.*, pp. 30-55.
[4] *Id.*, pp. 57-63.

The Parties

Petitioner CIR is the Commissioner of the Bureau of Internal Revenue ("BIR") and is duly appointed to perform the duties of said office, including among others, the power to act upon and render final decisions on protests filed against internal revenue tax assessments and other matters arising under national internal or other laws administered by the BIR. He holds office at the BIR National Office Building located at Agham Road, Diliman, Quezon City.[5]

Respondent RCBC is a bank duly organized and incorporated in the Philippines, providing traditional consumer banking products and services such as deposit products, home mortgage loans, auto loans, and personal loans.[6]

The Facts

The Letter of Authority No. 00006824, dated 26 June 2008, was issued for the examination and investigation of respondent's books of accounts and other accounting records for all internal revenue taxes covering taxable year ("TY") 2007.[7]

Afterwards, a Waiver of the Defense of Prescription ("1st Waiver") was allegedly executed by a Ms. Jo Ann C. Chan on behalf of respondent to extend the period for petitioner's assessment and/or collection of the subject taxes for TY 2007 to 28 February 2011. Said 1st Waiver was supposedly approved by petitioner on 22 November 2007.[8]

A Notice of Informal Conference was then issued against respondent on 10 January 2011.[9]

A 2nd Waiver was then purportedly executed by Ms. Chen on behalf of respondent to extend petitioner's period to assess the subject taxes to 30 June 2011. The same was approved by petitioner on 2 February 2011.[10]

A Preliminary Assessment Notice ("PAN") was then issued to respondent on 3 May 2011. Respondent filed its Reply to said PAN on 1 June 2011.[11]

On 23 June 2011, respondent received a Formal Assessment Notice with Formal Letter of Demand ("FAN/FLD"). Respondent replied via a Protest, dated 21 July 2011, which it filed on 22 July 2011.[12]

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5 Decision, dated 22 November 2023, p. 2, *id.*, p. 31.
6 *Ibid.*
7 *Ibid.*
8 *Ibid.*
9 *Ibid.*
10 Decision, dated 22 November 2023, p. 3, *id.*, p.32.
11 *Ibid.*
12 *Ibid.*

Acting on the Protest, then OIC-ACIR Alfredo V. Misajon issued a Final Decision on Disputed Assessment ("FDDA"), which was received by respondent on 19 November 2013. Respondent then filed its Appeal to the FDDA before petitioner on 16 December 2013.[13]

Petitioner denied respondent's Appeal through a Decision, dated 2 April 2018. The same was received by respondent on 6 April 2018.[14]

Aggrieved, respondent filed a Petition for Review before the CTA on 4 May 2018.[15]

Before the case could proceed, however, respondent received a Warrant of Distraint and/or Levy bearing Warrant No. 125-2018-010. It responded by filing an Urgent Motion for Suspension of Collection of Taxes on 10 May 2018.[16]

After hearing the Motion, and after petitioner filed a Memorandum and respondent filed an Opposition (On Petitioner's Urgent Motion for Suspension of Collection of Taxes), the Court in Division granted the Urgent Motion, subject to the posting of a bond, in a Resolution, dated 31 May 2018.[17]

Dissatisfied with the required bond, respondent filed an Omnibus Motion partially assailing the 31 May 2018 Resolution. Said Omnibus Motion would eventually be denied, after various incidents, on 7 November 2019, prompting respondent to pay the required bond.[18]

Additionally, petitioner had earlier filed a Motion to Admit Answer on 2 August 2018. The Court, in a 4 October 2018 Resolution, granted the Motion and admitted the attached Answer.[19]

After the parties' submission of their respective Pre-Trial Briefs, the Pre-Trial Conference was held on 30 January 2020. The parties then submitted their Joint Stipulations of Facts and Issues on 3 March 2020, and the Court in Division issued the Pre-Trial Order on 15 July 2020.[20]

After presenting its evidence and sole witness, respondent filed its Formal Offer of Evidence on 20 November 2020. The Court in Division denied a number of its offered exhibits on 14 January 2021, but these were later admitted, on 30

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13 Decision, dated 22 November 2022, p. 4, *id.*, p. 33.
14 *Ibid.*
15 Decision, dated 22 November 2022, p. 5, *id.*, p. 34.
16 *Ibid.*
17 Decision, dated 22 November 2022, pp. 5-6, *id.*, pp. 34-35.
18 Decision, dated 22 November 2022, pp. 6-8, *id.*, pp. 35-37.
19 Decision, dated 22 November 2022, pp. 6-7, *id.*, pp. 35-36.
20 Decision, dated 22 November 2022, p. 9, *id.*, p. 38.

September 2021, after respondent filed a Motion for Partial Reconsideration on 17 February 2021.[21]

Petitioner then presented his own evidence and sole witness, followed by the filing of his Formal Offer of Evidence on 3 February 2021.The Court denied seven (7) of his exhibits but admitted the rest in a Resolution, dated 17 June 2021.[22]

Petitioner and respondent filed their separate Memoranda on 18 November 2021 and 9 December 2021, respectively. The case was then submitted for decision on 16 December 2021.[23]

The Court in Division promulgated the Assailed Decision on 22 November 2022. Said Decision granted respondent's Petition for Review as the Court in Division found that petitioner had violated respondent's right to due process by failing to inform the latter of the factual and legal bases of the assessment against it.[24] It also enjoined petitioner from collecting or further acting on said assessment.[25]

Aggrieved, petitioner filed his Motion for Reconsideration[26] to the same on 16 December 2022. The Motion was denied in the Assailed Resolution on 22 June 2023.

Further aggrieved, petitioner filed the instant Petition for Review before the Court *En Banc* on 28 July 2023. Respondent filed its Comment on 22 August 2023.

Subsequently, the Court *En Banc* submitted the case at bar for decision on 11 September 2023.[27]

Hence, this Decision.

The Assigned Errors

Petitioner assigns the following errors to the assailed issuances of the Court in Division:[28]

I. The Court in Division deprived petitioner of due process when it ruled on an issue never raised by respondent, never joined by the

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[21] Decision, dated 22 November 2022, pp. 9-10, *id.*, pp. 38-39.
[22] Decision, dated 22 November 2022, pp. 10-11, *id.*, pp. 39-40.
[23] Decision, dated 22 November 2022, p. 11, *id.*, p. 40.
[24] Decision, dated 22 November 2022, pp. 15-25, *id.*, pp. 44-54.
[25] Decision, dated 22 November 2022, p. 26, *id.*, p. 55.
[26] Division Records Vol. 2, pp. 1200-1214.
[27] *See* Minute Resolution, dated 11 September 2023, *EB* Records.
[28] Petition for Review, pp. 4-5, *id.*, pp. 10-11.

pleadings, never raised during Pre-Trial, and not defined in the Pre-Trial Order;

II. The Court in Division erred in ruling that respondent was deprived of due process; and

III. The Court in Division erred in enjoining and prohibiting petitioner from collecting the assailed deficiency taxes.

The Arguments

Petitioner claims that his right to due process and fair play was violated when the Court ruled on the due process requirements for assessment notices, an issue never raised by the parties.[29] On the other hand, he insists that respondent's right to due process was not violated by the subject assessment notices as these sufficiently apprised respondent of the factual and legal bases of the assessment against it.[30] He ends his discussion by claiming that the Court in Division had no authority to suspend the collection of the alleged deficiency taxes.[31]

Respondent counters the above claims by first observing that it consistently raised the issue of due process both before and during trial.[32] It further asserts that that the assailed assessment is void because, among other reasons, petitioner failed to properly inform it of said assessment's factual and legal bases.[33] Finally, respondent opines that the Court in Division's enjoinment of petitioner is a mere result of the finding that the assessment is void.[34]

The Ruling of the Court

The Petition for Review lacks merit.

The Court in Division did not err when it addressed an issue not explicitly raised.

To review, petitioner's first disagreement with the Assailed Decision is its coverage of an issue supposedly not raised by either party when it determined that petitioner violated respondent's right to due process when he issued assessment notices *sans* sufficient explanation of the assessment. He cites ***Prime Steel Mill Incorporated v. Commissioner of Internal Revenue***[35] ("***Prime Steel Mill CTA***") to

[29] Petition for Review, pp. 5-8, *id.*, pp. 11-14.
[30] Petition for Review, pp. 8-13, *id.*, pp. 14-19.
[31] Petition for Review, pp. 13-14, *id.*, pp. 19-20.
[32] Respondent's Comment, pp. 1-5, *id.*, pp. 64-68.
[33] Respondent's Comment, pp. 5-11, *id.*, pp. 68-74.
[34] Respondent's Comment, p. 11, *id.*, p. 74.
[35] CTA EB No. 1678 & 1680, 3 January 2019.

argue that this Court has previously ruled that issues not raised cannot be countenanced by the Court in Division. He then quotes ***Republic Telecommunications Holdings, Inc., et al. v. Santiago, et al.***[36] ("***Republic Telecommunications***") to reiterate the general rule that appellate Courts can only countenance errors actually assigned. He invokes ***Sec. 1, Rule 11 of the Revised Rules of the Court of Tax Appeals*** ("***RRCTA***"), to contend that ***Sec. 7, Rule 18 of the Revised Rules of Court, as amended***, which mandates that the Pre-Trial Order limits the issues to be tried, applies to proceedings in the CTA. Finally, he also cites ***Republic v. Caguioa, et al.***[37] ("***Republic***") to remind this Court *En Banc* that even the Government, as a litigant, is entitled to the universal right to due process, implying that his own right to due process was violated by the Court in Division.

The Court *En Banc* is not convinced.

Prime Steel Mill CTA *covers Decisions by the Court* En Banc *under specific circumstances.*

First, ***Prime Steel Mill CTA*** is inapplicable here.

In that case, the Court *En Banc* refrained from ruling on the issue of the validity of a Letter of Authority as the evidence on record was insufficient for a proper resolution of said issue. However, the Court *En Banc* did, in fact, take cognizance of the issue of the FAN/FLD having been filed too early, despite said issue not having been raised before the Court in Division.

The difference is that the FAN/FLD issue could be resolved via the evidence on record alone. The distinction was further discussed by the Supreme Court when the case was elevated to them as ***Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue***[38] ("***Prime Steel Mill SC***"). In that Decision, the Supreme Court approved of the CTA *En Banc*'s refusal to address the issue regarding the Letter of Authority. However, the High Court also agreed with the CTA *En Banc* taking cognizance of the issue regarding the FAN/FLD. To explain the seeming contradiction, the Supreme Court proclaimed that the CTA *En Banc* can rule on issues not raised before the CTA in Division when two conditions are met:

> "From the foregoing, the Court so holds that the CTA En Banc, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: one, **these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case**; and **two, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.**"

[36] G.R. No. 140338, 7 August 2007.
[37] G.R. No. 174385, 20 February 2013.
[38] G.R. No. 249153, 12 September 2022.

(Emphasis supplied.)

Both of the conditions identified above obtain in the case at bar, as will be shown in more detail later in this Decision. The issue of due process requirements is inextricably related to the issue of respondent's alleged liability, as the latter cannot be resolved without addressing the former. Moreover, the Court in Division based its ruling in the Assailed Decision only on the evidence already in the records of the case. Assuming, then, that the general barring of appellate courts from ruling on issues not raised below is even applicable here, said rule cannot defeat the Assailed Decision as the case before the Court in Division was an exception.

More importantly, ***Prime Steel Mill CTA*** is inapplicable to the instant case because the discussions in the former revolve around the powers of the Court *En Banc* to rule on issues not raised before the Court in Division. They are *not* about the Court in Division ruling on issues allegedly not raised during trial. Accordingly, the doctrine respondent derived from ***Prime Steel Mill CTA*** cannot be applied to the Assailed Decision, and certainly not a partial and mistaken interpretation of the former.

Petitioner's contention here is thus misplaced.

The general prohibition against ruling, at the appellate level, on issues not raised below does not apply to the Assailed Decision.

Second, the Assailed Decision did *not* rule on an issue not raised. Whether or not petitioner informed respondent of the factual and legal bases of the assessment was an issue explicitly raised by respondent before and during trial in its Petition for Review,[39] in its Pre-Trial Brief,[40] and even in the Judicial Affidavit of its witness.[41] Said issue was thus clearly assigned by respondent as an error in the conduct of the assailed assessment.

Assuming *arguendo* that only issues stipulated in the Pre-Trial Order may be considered "raised", ***Republic Telecommunications*** does not only prohibit appellate judgments from considering errors not assigned. It also identifies the circumstances under which an appellate Court may countenance issues not previously raised. A clear list of such circumstances is included in footnote twenty-five (25) of said Decision, which We quote here:

> "This Court has allowed the consideration of other grounds not raised or assigned as errors specifically in the following instances: (1) grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) matters not assigned

[39] Petition for Review, pp. 13-14, Division Records Vol. 1, pp. 21-22.
[40] Petitioner's Pre-Trial Brief, dated 23 January 2020, p. 6, Division Records Vol. 2, p. 734.
[41] Judicial Affidavit of Ms. Eleanor E. Escote, dated 24 January 2020, p. 7, Division Records Vol. 2, p. 742.

as errors on appeal but are evidently plain or clerical errors within the contemplation of the law; (3) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) **matters not assigned as errors on appeal but closely related to an error assigned**; and (6) **matters not assigned as errors on appeal but upon which the determination of a question properly assigned is dependent**."
(Citations omitted; emphasis supplied.)

Most relevant to the case at bar are items (5), and (6): an appellate Court may address an issue left unraised if (a) said issue is closely related to an assigned error; and (b) the "determination of a question properly assigned is dependent" on the resolution of said issue.

To review, the issue at the core of this case is whether or not respondent is liable for the assailed assessment, as stipulated by *both* respondent *and* petitioner in their Joint Stipulation of Facts and Issues:

"Whether or not Petitioner RSB is liable for the amount of ₱688,330,727.27 representing deficiency taxes for 2007 x x x"[42]

However, the determination of the assailed assessment's validity is indispensable to the determination of whether or not respondent is liable for the assessed amount. After all, as emphasized by the Supreme Court in ***Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue***[43] ("***Prime Steel Mill SC***"), "the BIR's right to collect taxes must flow from a valid assessment". A void assessment bears no fruit.[44]

As raised by the Court in Division in the Assailed Decision, ***Sec. 228 of the NIRC*** requires an assessment to inform the taxpayer of its legal and factual bases, on pain of being void:

"The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; **otherwise, the assessment shall be void.**"
(Emphasis supplied.)

From the above, any resolution of the issue of respondent's liability for the assessed amount is dependent on determining the validity of the assessment, and any determination of the validity of the assessment is dependent on finding whether or not respondent properly informed petitioner of the legal and factual basis for said assessment.

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[42] Joint Stipulation of Facts and Issues, dated 26 February 2020, p. 2, Division Docket Vol. 2, p. 804.
[43] G.R. No. 249153, 12 September 2022.
[44] *See*, for example, People of the Philippines v. Italcar Pilipinas, Inc., et al., G.R. No. 222280, 18 January 2023.

The instant case thus falls under the "exceptional circumstances" enumerated in ***Republic Telecommunications***. Whether or not petitioner is liable for the assessed amount is dependent on whether or not petitioner was properly informed of the laws and facts supporting the assessment, following exception (6). The former being dependent on the latter, the issues are inextricably related, following exception (5). The Court in Division was thus not prohibited by the general rule from countenancing an issue not explicitly raised by either party, assuming, again, that respondent did not already raise said issue.

The suppletory application of the general rule on Pre-Trial Orders must yield to a rule specifically instituted for the CTA.

Third, while ***Sec. 1, Rule 11 of the RRCTA*** prescribes the *suppletory* application of ***Sec. 7, Rule 118 of the Revised Rules of Court, as amended***, the same cannot be given priority over the Court in Division's *direct* application of ***Sec. 1, Rule 14 of the RRCTA***. To explain this in sufficient detail, a review of the above-cited rules is in order.

Sec. 1, Rule 11 of the RRCTA states:

> "SECTION 1. *Applicability.* — The rule on pre-trial under Rules 18 and 118 of the Rules of Court, as amplified in A.M. No. 03-1-09-SC dated July 13, 2004 (Re: Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures), shall apply to all cases falling within the original jurisdiction of the court, except that the parties may not be allowed to compromise the criminal liability."
> (Emphasis supplied.)

The above identifies ***Rules 18 and 118 of the Rules of Court*** as applicable to cases before the original jurisdiction of the Court in Division. As ***Rule 118*** covers criminal procedure, what is relevant here is ***Rule 18***. Below is ***Sec. 7*** of said rule:

> "SEC. 7. *Record of pre-trial.* — The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recire in detail the matters taken up in the conference, the actions taken there on, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, **the order shall explicitly define and limit the issues to be tried**. The Contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice."
> (Emphasis supplied.)

Under ***Sec. 7, Rule 18 of the Rules of Court***, then, the pre-trial order limits the issues to be tried. However, ***Paragraph 2, Sec. 1, Rule 14 of the RRCTA*** explicitly allows the CTA to rule upon issues not stipulated by the parties:

"In deciding the case, the Court **may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**"
(Emphasis supplied.)

From the above, the CTA faces an irresolvable contradiction. ***Rule 18 of the Rules of Court*** disallows it from ruling on an issue not raised during pre-trial. ***Rule 14 of the RRCTA***, however, allows such a ruling. Which rule must the CTA obey?

The aporia dissipates, however, when it is recalled that ***Rule 18 of the Rules of Court*** sees merely *suppletory* application in the CTA. When the former contradicts ***Rule 14 of the RRCTA***, then, the latter must prevail, for the suppletory application of rules must not contradict rules specifically governing the subject matter.[45] The High Court's explanation of suppletory application in ***Government Service Insurance System, et al. v. Dinnah Villaviza, et al.***,[46] which was later reaffirmed in ***Philippine Deposit Insurance Corporation v. Manu Gidwani***,[47] is instructive here:

"It is true that Section 4 of the Rules of Court provides that the rules can be applied in a 'suppletory character.' Suppletory is defined as 'supplying deficiencies.' **It means that the provisions in the Rules of Court will be made to apply only where there is an insufficiency in the applicable rule**. There is, however, no such deficiency as the rules of the GSIS are explicit in case of failure to file the required answer. What is clearly stated there is that GSIS may 'render judgment as may be warranted by the facts and evidence submitted by the prosecution.'"
(Citations omitted; emphasis supplied.)

Adapting the above to the circumstances of the present case, ***Rule 18 of the Rules of Court*** is applicable to proceedings before the CTA only insofar as said rule fills any extant gaps, so to speak, in the ***RRCTA***. ***Rule 18***'s prohibition on considering issues not raised would apply to the Court in Division *if* the ***RRCTA*** did not have any specific rule delineating what the Court may and may not address in its decisions.

However, ***Rule 14 of the RRCTA*** already performs such a role. Said rule unequivocally allows the Court to rule on issues not stipulated by the parties. As such, ***Rule 18 of the Rules of Court*** cannot override the former. Petitioner is thus mistaken in trying to apply the latter to the Assailed Decision.

Either way, the Pre-Trial Order identified petitioner's alleged liability for the assessed amount as the central issue to be tried.[48] The same could not have been substantially resolved by the Court in Division without inquiring into the validity of the assessment and, concomitantly, the satisfaction of the due process requirements

[45] *See* Harbour Centre Port Terminal, Inc. v. Hon. Arreza, et al., G.R. No. 211122, 6 December 2021.
[46] G.R. No. 180291, 27 July 2010.
[47] G.R. No. 234616, 20 June 2018.
[48] Pre-Trial Order, p. 11, Division Docket Vol. 2, p. 830.

for all assessments, as already discussed above. In this sense, the ruling in the Assailed Decision did not stray from the issue stipulated by the parties, as recorded in the Pre-Trial Order, even if said ruling had to dig beyond the surface of the controversy as summarized.

The Court in Division did not violate respondent's right to due process.

As to petitioner's contention that he has a right to due process, the Court *En Banc* does not deny this. However, considering all that has been discussed thus far, the Court in Division disobeyed no applicable law, rule, or jurisprudence. As such, it did not violate petitioner's right to due process.

The Assailed Decision clearly identified the laws, rules, and jurisprudence upon which its ruling was based. It thoroughly specified the findings of fact and pieces of evidence, such as the PAN, FLD/FAN, and FDDA, which led to its determination of the case. While it may not have mechanically and shortsightedly stuck to the exact wording of the issue as summarized in the Pre-Trial Order, all of its conclusions emanated from clear legal pronouncements as well as documents and arguments presented during trial. In any event, respondent consistently raised the issue of due process requirements across multiple submissions. Petitioner thus cannot claim to have been "blindsided" by the adverse decision when the basis for the same was so thoroughly explained to him and when the critical issue was so frequently raised.

Unfortunately, petitioner did not pay the same courtesy to respondent. The assessment on which respondent's alleged liability was based is thus void.

Respondent's right to due process was violated as the PAN and FAN lacked a sufficient explanation of the assessment's factual basis.

As already quoted above, ***Sec. 228 of the NIRC*** declares that an assessment is void if its notice does not identify the laws and facts which serve as its basis. Petitioner insists on the fidelity of the subject assessment notices to this mandate. He cites ***Commissioner of Internal Revenue v. Hon. Raul M. Gonzales, et al.***[49] ("***Gonzales***"), and ***Commissioner of Internal Revenue v. Liquigaz Philippines Corporation***[50] ("***Liquigaz***") to argue that an assessment notice may exclude unnecessary details so long as it sufficiently complies with ***Sec. 228***. He further cites ***Commissioner of Internal Revenue v. Asalus Corporation***[51] ("***Asalus***

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[49] G.R. No. 177279, 13 October 2010.
[50] CTA *EB* Nos. 989 & 990, 22 May 2014.
[51] G.R. No. 221590, 22 February 2017. While petitioner mentions Asalus Corporation in the body of his Petition for Review, in his footnotes for the citation, he cites 3M Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 9213 & 9214, 30 January 2019.

Corporation"), ***Samar-I Electric Cooperative v. Commissioner of Internal Revenue***[52] ("***Samar-I Electric***"), ***Spouses Estares v. Court of Appeals***[53] ("***Estares***"), and ***Juan Calma, et al. v. Court of Appeals, et al.***[54] ("***Calma***") in support of his claim that an assessment does not violate the right to due process if the taxpayer is given the opportunity to protest said assessment. To counter the Assailed Decision's use of ***Commissioner of Internal Revenue v. Avon Products***[55] ("***Avon***"), petitioner quotes Hon. Associate Justice Catherine T. Manahan's Concurring and Dissenting Opinion ("CDO") in ***Commissioner of Internal Revenue v. First Philippine Industrial Corporation***[56] ("***First Philippine Industrial***") and holds that the ruling in ***Avon*** conjures a requirement decidedly absent from the law. Finally, petitioner cites ***Petronila C. Tupaz v. Hon. Benedicto B. Ulep***[57] ("***Tupaz***") and ***SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue***[58] ("***SMI-ED***") to define an assessment.

The Court *En Banc* is not swayed. Despite the quantity of legal pronouncements on offer, petitioner fails to convincingly apply these to the case at bar.

A definition of assessments does not invalidate the requirements thereof.

As to petitioner's definition of an assessment, while ***Tupaz*** and ***SMI-ED*** define assessments broadly as a determination or computation of tax liabilities due accompanied by a demand for the payment of said liabilities, such a definition does not contain any revocation of any due process requirement set by law. The offered definition is thus irrelevant to the issue at hand and deserves scant consideration.

The PAN and FAN did not sufficiently comply with **Sec. 228 of the NIRC**.

Regarding petitioner's contention that his assessment sufficiently complied with ***Sec. 228***, the same lacks merit.

To be sure, an assessment is not automatically voided if it lacks substantially irrelevant details such as a control number, following ***Liquigaz***. Neither does it need to present an encyclopedic explication of every law and fact used to produce said assessment, following ***Gonzales***.

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[52] G.R. No. 193100, 10 December 2014.
[53] G.R. No. 144755, 8 June 2005.
[54] G.R. No.122787, 9 February 1999.
[55] G.R. Nos. 201398-99 and 201418-19, 3 October 2018.
[56] CTA *EB* No. 2376, 29 September 2022.
[57] G.R. No. 127777, 1 October 1999.
[58] G.R. No. 175410, 12 November 2014.

However, neither of these is what was found to be absent from the PAN and FAN. Rather, the Court in Division found that said assessment notices lacked any clear and addressable explanation as to how the assessments were produced. The Court in Division's exhaustive findings of fact is worth quoting here:

> "Attached to the said PAN is a 'SUMMARY OF FINDINGS', which contains schedules on how the above figures were arrived at, coupled with the citation of the supposed legal bases. However, an examination of the said PAN and 'SUMMARY OF FINDINGS' would reveal that **the said schedule does not show the factual basis of the taxes due**. The same schedules merely contain tabular summaries [...] **Notably, they have no other details for each of the said findings which state any other explanation that would enable petitioner to make an effective protest**, contrary to Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013, which mandates that the PAN must "show in detail the facts... on which the proposed assessment is based'.
>
> Moreover, **it is glaringly noticeable that the PAN is not accompanied by a 'DETAILS OF DISCREPANCIES', which should embody the factual and legal bases of the PAN, as required under Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013**. It must be emphasized that the said provision refers to 'ANNEX A' thereof, which obviously was not observed by respondent or the BIR.
>
> On this score alone, We can already find a violation of petitioner's due process right. However, there is more.
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> x x x
>
> A comparison of the figures stated in the PAN dated May 3, 2011 and the [deficiency tax liabilities assessed in the FLD/FAN] would reveal that amounts of basic PT and DST due remain unchanged; but **the amounts for the basic IT, EWT and FWT due, were significantly increased, without any explanation whatsoever of the reasons therefor. Neither is there any indication that the arguments of petitioner, as stated in its Reply dated June 1, 2011, were addressed in the said FLD/FAN.**
>
> Similar to the PAN dated May 3, 2011, **the FLD/FAN dated June 8, 2011 is not accompanied by a 'DETAILS OF DISCREPANCIES', which is required under Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, in relation to 'ANNEX B' thereof.**"[59]
> (Citations omitted; emphasis supplied.)

From the thorough discussion above, what the PAN and FLD/FAN lacked was not some trivial formality or overly lengthy explanation. What they lacked were actual explanations in support of the specific amounts produced, retained, or adjusted. The PAN may have included the amounts allegedly due, but it did not reveal *how* petitioner and/or his officers at the BIR arrived at said amounts. The FLD/FAN may have informed respondent of the adjustments made to the assessment, but it did not show *why* the amounts were increased or even *why* respondent's protests were rejected. In other words, the PAN and FLD/FAN lacked a clear identification of the factual bases for their assessments.

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[59] Decision, dated 22 November 2022, pp. 23-24, *EB* Records, pp. 52-53.

Given the extent to which petitioner failed to comply with ***Sec. 228 of the NIRC***, he obviously cannot be said to have "sufficiently" complied with said requirement. His argument necessarily fails.

Respondent was not given the opportunity to protest the assessment.

Regarding petitioner's claim that the core of the due process requirement is the opportunity to have one's case heard, the Court notes that respondent cites various decisions in support of said contention. Crucially, he does not explain *why* the *dicta* in these issuances should be applied to this case.

To reiterate the findings of the Court in Division, petitioner's PAN and FLD/FAN lacked a clear explanation or even identification of the factual bases for the assessments made. Without access to such factual bases, respondent was effectively denied the right to an informed protest. Following the Assailed Decision, we quote ***Avon*** here:

> "The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments**. There was clear inaction of the Commissioner at every stage of the proceedings.
>
> x x x
>
> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, **when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record**.
>
> Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. **The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason**.
>
> x x x
>
> The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect."
> (Citations omitted; emphasis supplied.)

In the above, the High Court declared the assessment against therein taxpayer null and void as the Details of Discrepancies attached to the PAN did not address the arguments earlier raised by the taxpayer, among other reasons. This act of ignoring the taxpayer's arguments *without any stated reason* constituted a violation of ***Sec. 228 of the NIRC*** and ***Sec. 3.1.2 of RR No. 12-99*** because "[t]he right to be heard, which includes the right to present evidence is meaningless if the Commissioner simply ignores the evidence without reason".

The case at bar does not even involve a Details of Discrepancies lacking a sufficient explanation for the assessment. As found by the Court in Division, the subject PAN and FLD/FAN *lacked any Details of Discrepancies whatsoever*. They lack any explanations as to how the assessments were made or why respondent's previous arguments were unacceptable. These assessments notices thus clearly violated respondent's right to due process, even more so than those in ***Avon***.

In the Petition for Review before the Court *En Banc*, meanwhile, petitioner failed to counter the above finding from the Assailed Decision. He did not explain how respondent could have effectively protested the amounts listed in the PAN without knowing how said amounts were produced. He did not argue that respondent could have disputed the increased amounts of the FLD/FAN without knowing why said amounts were increased. He did not even allege that respondent could have continued protesting the assessment without knowing petitioner's reasons for rejecting its previous arguments.

In short, petitioner failed to prove that the Court in Division was mistaken and that respondent was sufficiently afforded the opportunity to have its case heard. Merely parroting various decisions cannot convince this Court *En Banc* of a claim without any clear statement as to how and why the doctrines invoked should apply under the specific circumstances of a specific case. Accordingly, We cannot accept this line of argument as offered by petitioner.

Avon *is applicable to the present case, and its doctrine is based on the law.*

Finally, as to petitioner's complaints against ***Avon***, the Court *En Banc* finds these untenable.

We first reproduce the passage quoted by petitioner from Hon. Associate Justice Manahan's Concurring and Dissenting Opinion in ***First Philippine Industrial***:

> "Lastly, and with all due respect to the majority, I submit that the ruling of the Supreme Court in the case of Commissioner of Internal Revenue vs. Avon Products, must be applied sparingly and not in all cases where the findings of the Commissioner of Internal Revenue embodied in the FAN reflect the same and/or identical conclusions with that stated in the Preliminary Assessment Notice (PAN)

as the latter still has the prerogative to reiterate her findings in the FAN after considering inadequate and un-supportive the arguments and theories that may be propounded by the taxpayer in its protest."
(Citations omitted; emphasis supplied.)

Contra petitioner's view, the Court *En Banc* does not take this to contradict the Assailed Decision. The CIR is in no way barred from retaining his assessment if he finds that the arguments of a taxpayer against it are "inadequate and un-supportive". This is not in question. As such, ***Avon*** is not applicable to all cases where the CIR completely rejects the explanations of a taxpayer. To require the CIR to adjust all assessments protested by a taxpayer, even when said protest is clearly nonsensical, would be absurd and a misappreciation of the actual mandate of ***Sec. 228 of the NIRC***.

However, the CIR is allowed to completely reject a taxpayer's protest *so long as the reasons for such rejection are clearly communicated to the taxpayer*. This is the subject matter of ***Avon***. If such communication is present in a case, then ***Avon*** is inapplicable. However, if such communication is absent, as in the present case, then ***Avon*** must be applied.

Moreover, the Court finds no truth to petitioner's claim that ***Avon*** is an act of "judicial legislation [that] required [the CIR] to do something that is not in the law". The doctrine in ***Avon*** is logically and reasonably derived from the law and even petitioner's own issuances:

"The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. **Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.**

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' **This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.**"
(Citations omitted; emphasis supplied.)

The above clearly states the specific sections of the specific laws and regulations which gave rise to the Supreme Court's pronouncements in ***Avon***. To reiterate, ***Sec. 228 of the NIRC*** as well as ***Sec. 3.1.2, 3.1.4, and 3.1.6*** all require petitioner, through the various notices he issues during the course of an assessment, to inform a taxpayer of the factual and legal bases of the assessment against it. ***Avon*** is thus an explication of what is already found in the relevant laws and regulations. It does not add a rule absent from these.

This is true even of the requirement that petitioner actually address the arguments of a taxpayer against an assessment. As petitioner himself argues, via citations of ***Asalus Corporation***, ***Samar-I Electric***, ***Estares***, and ***Calma***, the heart of the right to due process lies in being given the opportunity to be heard, to intelligently present and argue one's case. However, as the Supreme Court observed in ***Avon***, "[t]he right to be heard, which includes the right to present evidence is meaningless if the Commissioner simply ignores the evidence without reason".

To paraphrase the above, a taxpayer *cannot* intelligently and effectively argue its case if it does not even know against what it is arguing. If a taxpayer's protest is rejected without any stated reasons, then how can it formulate arguments to further protest said rejection? How can it adduce proper evidence if it does not know what it has to prove? How can it present accurate calculations when it cannot tell which of its previously offered amounts were mistaken or imprecise? How can it cite the laws, rules, and regulations relevant to its case when it has no knowledge of what the CIR thinks its case even is?

The answer is simple: it cannot. Without any counterarguments to help it understand the CIR's rejection of its protest, a taxpayer cannot intelligently argue its case. It does not have the opportunity to be heard. In this way, ***Avon*** simply makes explicit what is already an implicit but unavoidable consequence of the law. The Court *En Banc* thus sees no issue with the Supreme Court's pronouncement.

From the foregoing, then, ***Sec. 228 of the NIRC*** required petitioner to inform respondent of the factual and legal bases for the assessments against it. As he failed to do so, he violated respondent's right to due process. Consequently, the assailed assessments are null and void.

And as has been reiterated by the High Court over the decades, a void assessment bears no fruit.

The Court in Division correctly enjoined petitioner from collecting the void assessments.

The final error ascribed by petitioner to the Assailed Decision concerns its act of enjoining him from collecting or further acting on the assailed assessment. To petitioner's eyes, the Court in Division did not have the authority to do so, as such

action is tantamount to a temporary restraining order restraining the collection of taxes, which is not allowed by law. Furthermore, even if the Court in Division had the authority to enjoin him in this way, it should have ordered respondent to post a bond, pursuant to ***Sec. 6, Rule 10 of the RRCTA***.

Petitioner's contention is misplaced. The prohibition was not tantamount to a temporary restraining order.

To the Court *En Banc*, the assailed enjoinment was included as a reminder and proactive deterrent to petitioner. It should be uncontroversial to observe that he is barred from collecting any alleged tax liability based on an assessment already found to be void. In other words, the Court in Division merely made explicit what was already an inescapable consequence of its finding that the assessment was void, for a void assessment bears no fruit.

This truism was reaffirmed in ***People of the Philippines v. Italcar Pilipinas, Inc., et al.***[60] and ***Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.***,[61] to name a few recent cases. The reasoning behind it was also stated in less metaphorical terms in ***Prime Steel Mill SC***, where the High Court emphasized that "the BIR's right to collect deficiency taxes must flow from a valid assessment". However, most discussions of a void assessment's inability to bear proverbial fruit return to the influential case of ***Commissioner of Internal Revenue v. Azcuna T. Reyes***[62] ("***Reyes Case***"):

> "*Fourth*, **petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process**. Not only was the law here disregarded, but no valid notice was sent, either. **A void assessment bears no valid fruit**.
>
> **The law imposes a substantive, not merely a formal, requirement**. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not been informed of the basis of the estate tax liability. **Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made**. The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.
>
> Even a cursory review of the preliminary assessment notice, as well as the demand letter sent, reveals the lack of basis for — not to mention the insufficiency of — the gross figures and details of the itemized deductions indicated in the notice and the letter. This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously 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.'"**

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[60] G.R. No. 222280, 18 January 2023.
[61] G.R. No. 223767, 24 April 2023.
[62] G.R. Nos. 159694 & 163581, 27 January 2006.

(Citations omitted; emphasis supplied.)

The Supreme Court, in the above, stressed that *no collection can be made without the presence of a valid assessment.* To reiterate, this requirement is substantial, not merely formal, as an assessment is required by law. Any collection effort must thus be done in accordance with the law.

Returning to the idea that a void assessment bears no fruit, the same can be put more literally as *a void assessment cannot serve as the basis for any collection effort* or, consequently, *no collection effort can be made when the same is based on a void assessment.* From the very meaning of the word "void", a finding that an assessment is void is a finding that *no valid assessment was ever conducted in the first place.* However, a valid assessment is a prerequisite for a valid collection effort. If no valid assessment exists, then no valid collection can be made.

Crucially, the Court in Division's enjoinment of petitioner stemmed from its judgment of the case on the merits. It was a consequence of the Court's ruling, in its Decision, that the assessment is void. For this reason, the same was not equivalent to a temporary restraining order. Along with preliminary injunctions, temporary restraining orders are a form of *provisional* remedy provided under ***Sec. 3, Rule 58 of the Rules of Court*** and are thus intended to maintain the *status quo* until the merits of a case have been fully heard. However, and to repeat, the Court in Division's act of enjoining petitioner was a consequence of its judgment on the merits of the case, *not* a temporary measure awaiting a final resolution of the issues. The two (2) are thus substantially different.

The above also explains why the Court in Division did not require respondent to post a bond when the former enjoined petitioner from collecting the void assessment. Said bond requirement would be pursuant to ***Sec. 6, Rule 10 of the RRCTA***, which governs motions for suspension of collection of tax and similar pleadings. However, the wording of the rule, the way it treats such actions as separate from the "main" trial on the merits of a case, implies that said suspensions are provisional remedies akin to a preliminary injunction. As such, a bond is not required for an enjoinment that arises from a Decision or Judgment in a case.

To dispel any lingering questions that petitioner may still entertain, the Court *En Banc* must also address ***Sec. 218 of the NIRC***, which prohibits courts from granting injunctions to restrain the collection of taxes:

> "SEC. 218. *Injunction not Available to Restrain Collection of Tax.* — No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code."

The exception to the above, as recognized by the Supreme Court, is when the CTA opines that the collection of a national internal revenue tax may jeopardize the interests of the government and/or the taxpayer.[63]

What is a relevant example of an act that constitutes jeopardizing the interests of the government and/or the taxpayer? For the purposes of the present discussion, We turn to the opening paragraph of ***Commissioner of Internal Revenue v. Algue, Inc., et al.***[64] ("***Algue***"), which was also quoted in ***Reyes***. Said paragraph states:

> "Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself**. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved."
> (Emphasis supplied.)

From the foregoing, any collection by petitioner that contradicts the law, such as a collection based on a void assessment, contradicts the purpose of the Government itself. Any collection that disregards the law and the rights of a taxpayer is thus directly counter to the reason for appointing a Commissioner of Internal Revenue, for creating a Bureau of Internal Revenue, and even for establishing a government at all.

Accordingly, if petitioner were to collect the void assessment, he would be acting counter to "the very reason for government itself". Such collection would thus jeopardize the interests of the Government, and the prohibition on injunction would not apply.

As an aside, a taxpayer cannot merely allege a void assessment then insist that this Court grant it an injunction on that basis alone. That an assessment is void is a conclusion that must first be proven and found by this Court, usually through a full-blown trial, before the prohibition on restraining the collection of taxes can be bypassed. The burden is still on the taxpayer to prove that a given collection would jeopardize its interests or, the more difficult option, those of the Government.

Returning to the issue, We are not even fully convinced that ***Sec. 218 of the NIRC*** applies to the assailed assessment. What said law prohibits are injunctions to restrain the collection of national internal revenue taxes, fees, and charges imposed by said law. However, the assessment in this case was rendered void precisely for violating ***Sec. 228 of the NIRC***. Having been conducted contrary to the provisions of the ***NIRC***, the void "assessment" thus cannot be properly considered a national internal revenue tax imposed by the ***NIRC***. Said law does not impose taxes whose assessments contradict its own provisions, after all. As such, the Court in Division

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[63] *See* Commissioner of Internal Revenue v. Standard Insurance Co., Inc., G.R. No. 219340, 28 April 2021, citing Angeles City v. Angeles City Electric Corporation, et al., G.R. No. 166134, 29 June 2010.

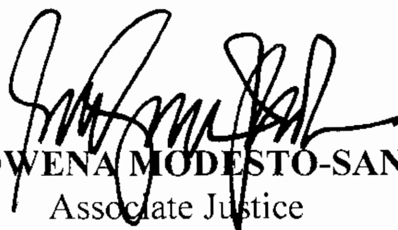
[64] G.R. No. L-28896, 17 February 1988.

acted within its authority when it enjoined petitioner from collecting or acting upon the void assessment.

All told, the Court *En Banc* sees no reason to disturb the findings of the Court in Division.

WHEREFORE, premises considered, the Petition for Review, filed on 28 July 2023 is hereby **DENIED** for lack of merit. The assailed Decision, dated 22 November 2022, and Resolution, dated 22 June 2023, are hereby **AFFIRMED**.

SO ORDERED.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

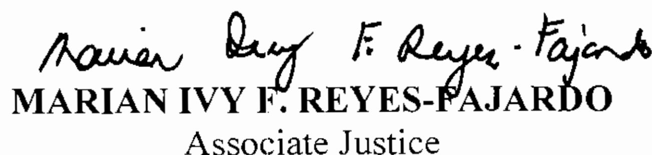
WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

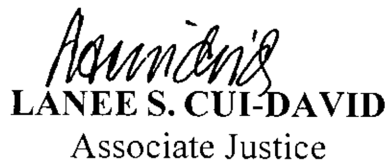
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

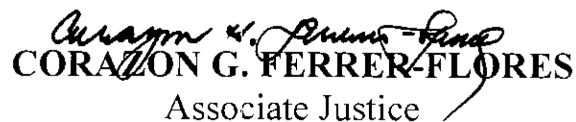
JEAN MARIE A. BACORRO-VILLENA
Associate Justice



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