

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LANTRO PHILIPPINES, INC.,
Petitioner,

CTA EB No. 2406
(CTA Case No. 9436)

Present:

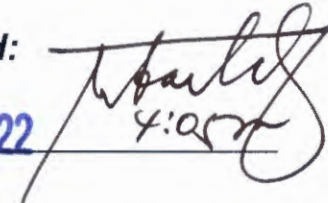
- versus -

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JUN 09 2022



x ----- x

DECISION

UY, J.:

Before this Court is the *Petition for Review*¹ filed on February 3, 2021 by petitioner, Lantro Philippines, Inc. (LPI), against respondent, Commissioner of Internal Revenue (CIR), praying that the Decision² dated August 26, 2020 and Resolution³ dated December 11, 2020, rendered by the First Division of this Court, in CTA Case No. 9436, entitled, "*Lantro Philippines, Inc., Petitioner vs. Commissioner of Internal Revenue, Respondent*" be reversed and set aside. The dispositive portions thereof respectively read as follows:



¹ EB Docket, pp. 12 to 44.

² EB Docket, pp. 47 to 67.

³ EB Docket, pp. 68 to 72.

Decision dated August 26, 2020:

“**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.”

Resolution dated December 11, 2020:

“**WHEREFORE**, petitioner’s *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.”

THE PARTIES

Petitioner LPI is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at No. 420, D. Francisco Legaspi St., Maybunga, Pasig City. It is a registered taxpayer with the Bureau of Internal Revenue (BIR), with Taxpayer Identification Number (TIN) 202-950-644-000.

Respondent CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who holds office at the 5th Floor BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

On December 10, 2015, the BIR issued Letter of Authority (LOA) No. LOA-43B-2015-00000471 (SN: eLA201200022032), authorizing the examination of LPI's books of accounts for all internal revenue taxes, including documentary stamp tax and other miscellaneous taxes, for the period from January 1, 2014 to December 31, 2014.

On January 7, 2016, LPI filed with the BIR its administrative claim for Value-Added Tax (VAT) refund covering the period of Taxable Year (TY) 2014 via the letter dated January 5, 2016, and *Applications for Tax Credits/Refunds* (BIR Form No. 1914). LPI prepared the *Transmittal Sheet* dated February 26, 2016, indicating



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therein that it is submitting certain documents/requirements needed for its application of VAT refund for the year 2014.

The CIR denied LPI's application for refund/issuance of tax credit certificate (TCC) in the letter dated June 24, 2016, a copy of which was received by LPI on July 26, 2016.

LPI filed its *Petition for Review* before the Court in Division on August 23, 2016 docketed as CTA Case No. 9436 entitled, "*Lantro Philippines, Inc., Petitioner vs. Commissioner of Internal Revenue, Respondent*".

In his *Answer* filed on September 26, 2016 in CTA Case No. 9436, the CIR interposed the following special and affirmative defenses:

- 1) LPI failed to substantiate its claim for refund. The documents were incomplete. Some of the documents submitted do not tally with schedules provided while some were invalid;
- 2) Petitioner's claim for issuance of tax refund/tax credit certificate is subject to administrative investigation/ examination by respondent's Bureau;
- 3) Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
- 4) It is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, particularly Sections 112, 113, and 114 to validly claim for tax a credit/refund;
- 5) Taxpayer must establish by sufficient and competent evidence that it is entitled to a tax refund/credit;
- 6) Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption; and
- 7) LPI should prove its legal basis for claiming the amount to be refunded."

After the pre-trial conference held on February 21, 2017, the parties submitted their *Joint Stipulation of Facts and Issues* on March 7, 2017. The Court in Division then issued the *Pre-Trial Order* dated April 6, 2017.

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During trial, LPI presented two (2) witnesses, namely: (1) Janyca Evi B. Goring, petitioner's Finance Executive; and (2) John Christian B. Sabal, the Court's duly commissioned Independent Certified Public Accountant (ICPA).

For his part, respondent presented a sole witness in the person of Anna Lorraine P. Peralta, a Revenue Officer of the BIR.

The *Memorandum for the Petitioner* was filed on August 20, 2019, while respondent failed to file his memorandum. On September 9, 2019, CTA Case No. 9436 was submitted for decision.

In the assailed Decision⁴ dated August 26, 2020, the Court in Division dismissed the *Petition for Review* for lack of jurisdiction.

LPI filed its *Motion for Reconsideration* on September 15, 2020. In the assailed Resolution⁵ dated December 11, 2020, the Court in Division denied the *Motion for Reconsideration* for lack of merit.

Undaunted, LPI filed before the Court *En Banc* a *Motion for Extension of Time to File Verified Petition for Review (Pursuant to Rule 8, Sec. 3(b) of the Revised Rules of the Court of Tax Appeals)* on January 20, 2021.⁶ In the Resolution⁷ dated January 22, 2021, the said Motion was granted and LPI was given a final and non-extendible period of fifteen (15) days from January 21, 2021, or until February 5, 2021 to file its Petition for Review.

Thereafter, LPI filed the instant *Petition for Review* on February 3, 2021 praying for the reversal and setting aside of the assailed Decision⁸ dated August 26, 2020 and Resolution dated December 11, 2020, rendered by the First Division of this Court, in CTA Case No. 9436.

On February 17, 2021, respondent was required to file his comment on the *Petition for Review*, within ten (10) days from notice.⁹ Respondent, however, failed to file his comment as per Records Verification¹⁰ dated June 4, 2021.

⁴ EB Docket, pp. 47 to 67.

⁵ EB Docket, pp. 68 to 72.

⁶ EB Docket, pp. 1 to 10.

⁷ EB Docket, pp. 11.

⁸ EB Docket, pp. 47 to 67.

⁹ EB Docket, pp. 141 to 142.

¹⁰ EB Docket, p. 143.

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Thus, the instant *Petition for Review* was submitted for Decision on June 23, 2021.¹¹ Hence, this decision.

ISSUES

LPI assails the Decision dated August 26, 2020 and Resolution dated December 11, 2020 based on the following grounds, to wit:

“A. The Honorable Court First Division erred in ruling that Lantro did not re-file its Application for Tax Credits/Refunds (BIR Form No. 1914) on February 26, 2016 for Value-Added Tax (VAT) covering the period of TY 2014.

B. Granting that the Application for Tax Credits/Refunds was refiled on February 26, 2016, the Honorable Court First Division erred in its position that the *Petition* before it was filed out of time.”¹²

Petitioner's arguments:

LPI contends that contrary to the findings of the First Division of this Court, LPI re-filed its Application for Tax Credits/Refunds (BIR Form No. 1914) on February 26, 2016 for Value-Added Tax (VAT) covering the Taxable Year 2014.

Moreover, petitioner asserts that granting that the Application for Tax Credits/Refunds was refiled on February 26, 2016, the First Division of this Court erred in its position that the *Petition* before it was filed out of time.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Section 112 of the NIRC of 1997, as amended by Republic Act (RA) No. 9337¹³, provides as follows: 

¹¹ EB Docket, pp. 145 to 146.

¹² EB Docket, p. 18.

¹³ An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended and for Other Purposes.

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"SEC. 112. Refunds or Tax Credits of Input Tax. -

(A) *Zero-Rated or Effectively Zero-Rated Sales. -* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales xxx xxx xxx

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.-* In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals." 

Clearly from the foregoing provisions, an administrative claim for refund must be filed within two (2) years after the close of the taxable quarter when the sales were made.

Moreover, it is provided under Section 112 (C) of the NIRC of 1997, as amended, that in case of full or partial denial of the refund claim, or the failure on the part of the CIR to act on the said claim *within* a period of 120 days, the taxpayer may file its judicial claim with the CTA, within 30 days from receipt of the decision or after the expiration of the said 120-day period.

For purposes of determining when the 120-day period would commence, reference is made to Revenue Memorandum Circular (RMC) No. 54-2014¹⁴ dated June 11, 2014, stating the procedure for the filing and processing of administrative claims, to wit:

"II. Filing and Processing of Administrative Claims —

The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a **statement under oath attesting to the completeness of the submitted documents** (Annex "B"). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/ investigating office shall prepare and issue



¹⁴ SUBJECT: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

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the corresponding Denial Letter to the taxpayer/claimant.”
(*Emphasis supplied*)

Based on the foregoing, starting June 11, 2014, *all* applications for VAT refund/tax credit must already be submitted with complete supporting documents, as well as a statement under oath, attesting to the completeness of the submitted documents. More importantly, *no other documents* will be accepted or required from the taxpayer in the course of its evaluation, and the decision of the Commissioner shall be based only on the documents submitted by the taxpayer. And in case of failure of the taxpayer/claimant to submit complete supporting documents, the application for tax refund/tax credit shall be denied. Thereafter, the corresponding Denial Letter shall be issued to the taxpayer/claimant.

Considering that petitioner's refund claim was filed on January 7, 2016, while its *Transmittal Sheet* was filed on February 26, 2016, (RMC) No. 54-2014 dated June 11, 2014 is applicable in the instant case.¹⁵

As regards the timeliness of the administrative claim, there is no issue with regard to the filing thereof within the two (2) year reglementary period after the close of the taxable quarter when the sales were made.

The crux of the controversy, however, pertains to the date of filing of the administrative claim by petitioner, *i.e.*, whether the administrative claim was filed on January 7, 2016,¹⁶ or was it refiled on February 26, 2016,¹⁷ as claimed by petitioner.¹⁸

Relative thereto, We scrutinize the *Application for Tax Credits/Refunds* (BIR Form No. 1914),¹⁹ filed by petitioner, as well as its *Letter of Request*²⁰ dated January 5, 2016, applying for VAT

¹⁵ *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

¹⁶ Exhibits “P-4” to “P-4-4,” Division Docket (CTA Case No. 9436) - Vol. II, pp. 718 to 722; BIR Records, pp. 18 to 22.

¹⁷ Exhibits “P-6” to “P-7,” Division Docket (CTA Case No. 9436) - Vol. II, pp. 724 to 725; BIR Records, pp. 120 to 121.

¹⁸ Paragraphs 25 to 40, Petition for Review, EB Docket, pp. 12 to 43, at 19 to 25.

¹⁹ Exhibits “P-4” to “P-4-3,” Division Docket (CTA Case No. 9436) - Vol. II, pp. 718 to 721; BIR Records, pp. 18 to 21.

²⁰ Exhibit “P-4-4,” Division Docket (CTA Case No. 9436) - Vol. II, p. 722; BIR Records, p. 22.

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refund for TY 2014, both of which were stamped received by the BIR on January 7, 2016. For easy reference, pertinent portions of the subject *Letter of Request* are reproduced hereunder, to wit:

“LETTER OF REQUEST

RE: Application for Vat Refund

Dear Madame:

In behalf of Lantro Phils., Inc. (TIN Number: 202-950-644-000) a corporation duly organized and existing under the law of the Philippines, with office address at #420 Unit D, Francisco Legaspi St., Maybunga, Pasig City, ***we would like to apply the following for VAT refund/TCC claimed:***

xxx xxx xxx.” (*Emphasis supplied.*)

As mentioned earlier, petitioner maintains that it re-filed its administrative claim for refund on February 26, 2016, when it submitted new application forms in its transmittal, even if it was not stamped received on its face.²¹

In support thereof, petitioner argues that the *Transmittal Sheet*²² dated February 26, 2016, and *Checklist of Mandatory Requirements for Claims for VAT Credit/Refund*,²³ while both unstamped, still proves that it intended to re-file its claim. Otherwise, petitioner would have been satisfied with the original filing on January 7, 2016.²⁴

The Court notes that the title of the subject *Transmittal Sheet* refers to *Re: Submssion (sic)*. For easy reference, the pertinent portions of the subject *Transmittal Sheet* are quoted hereunder, to wit:

²¹ Paragraph 29, Petition for Review, EB Docket, pp. 12 to 43, at 21.

²² Exhibit “P-6,” Division Docket (CTA Case No. 9436) - Vol. II, pp. 724 to 725; BIR Records, p. 120.

²³ Exhibit “P-7,” Division Docket (CTA Case No. 9436) - Vol. II, p. 726; BIR Records, p. 121.

²⁴ Paragraph 35, Petition for Review, EB Docket, pp. 12 to 43, at 22.

"TRANSMITTAL SHEET

xxx xxx xxx
RE: **Submssion** (*sic*)

Dear Mam:

In behalf of Lantro Phils., Inc. (TIN Number: 202-950-644-000) a corporation duly organized and existing under the law of the Philippines, with office address at #420 Unit D, Francisco Legaspi St., Maybunga, Pasig City, **we transmit here with the following documents/requirements needed for our application of VAT refund for the year 2014:**

xxx xxx xxx." (*Emphasis supplied.*)

A perusal of the *Letter of Request* filed on January 7, 2016, and the *Transmittal Sheet* dated February 26, 2016, shows that the administrative claim for refund was actually filed on **January 7, 2016**. In fact, the *Transmittal Sheet* dated February 26, 2016, was a mere submission of the documentary requirements in support of its administrative claim for refund.

Contrary to petitioner's claims, the stark difference in both the title and the contents of the two (2) letters, demonstrate the true intentions of petitioner in the filing thereof. To be specific, the *Letter of Request* categorically states that it is ***applying for a VAT refund***, while the *Transmittal Sheet* merely states that it is ***transmitting the documents/requirements needed for their application for VAT refund***.

The Court notes that nowhere in the subject *Letter of Request* is it stated that petitioner was re-applying, or re-filing its administrative claim for refund, or that the previous filing is being superseded. Rather, the *Transmittal Sheet* indicates that it is transmitting the documentary requirements for their claim for refund.

Hence, this Court agrees with the factual findings of the Court in Division as stated in the assailed Decision dated August 26, 2020, that there was no re-filing of the administrative claim on February 26, 2016, to wit:



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“xxx xxx xxx. The Court is not convinced that petitioner filed or re-filed its administrative claim or applications for VAT refund on February 26, 2016, since there is no indication thereon of such fact. Said subsequent filing failed to state categorically that it supersedes the earlier administrative claim filed on January 7, 2016.

Petitioner's bare allegation that there was a filing or re-filing of its administrative claim specifically on February 26, 2016 cannot simply be admitted as a matter of fact, albeit that the application forms are found in the BIR Records. Knowing precisely the actual date of filing is crucial, since this is ultimately determinative of whether this Court has jurisdiction to entertain the present appeal. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.

Hence, without any sufficient basis to support the fact of filing or re-filing of petitioner's administrative claim on February 26, 2016, it cannot be said that the same was indeed filed on the said date. As earlier observed, the second filing was not stamped received by the BIR and may well be construed to be additional submissions for the first filing.

Indeed, nothing prevents petitioner from re-filing its refund application provided it is still within the stated prescriptive periods. Thus, We entertain serious doubts that a re-filing of the administrative claim was done, or at the very least, was petitioner's real intention.”²⁵

As reiterated by the Court in Division in the assailed Resolution dated December 11, 2020, the filing on February 26, 2016 may be construed only as *additional submissions*, to wit:

“As discussed in the Decision, the Court cannot consider that the filing on February 26, 2016 was a new or re-filing of petitioner's administrative claim for refund. There is no indication therein that it supersedes the earlier administrative claim filed on January 7, 2016. At

²⁵ Decision dated August 26, 2020, EB Docket, pp. 47 to 67, at 64 to 65.

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best, the filing on February 26, 2016 may be construed only as additional submissions to support the first filing."²⁶

It bears emphasis that while the Court *En Banc* agrees with the Court in Division's pronouncement that the re-filing of administrative claims within the prescriptive period is *not* prohibited, to the mind of the Court *En Banc*, taxpayer-claimants must be cautioned to act judiciously and with circumspection, considering that the actual date of filing a refund claim is crucial for purposes of counting the 120-day period for the CIR to act on the claim, and thereafter, the 30-day period to file a judicial claim, which ultimately affects the jurisdiction of this Court to entertain the claim for refund.

Hence, We cannot countenance petitioner's assertion that it re-filed its administrative claim on February 26, 2016 without any showing that it categorically and definitely abandoned its initial administrative claim filed on January 7, 2016, as it will give rise to an undesirable precedent and practice wherein a taxpayer claimant will freely refile its administrative claim, without first withdrawing its earlier claim.

Furthermore, such vague and ambiguous action on the part of petitioner would result to confusion as to the actual date of filing of the administrative claim. Surely, petitioner cannot expect the Court to assume that it re-filed its administrative claim absent any clear and definite proof that it abandoned its initial administrative claim.

Considering now that the filing made on February 26, 2016 was a mere transmission of documentary requirements, the same shall not be considered as a re-filing of petitioner's administrative claim for refund. Therefore, petitioner's administrative claim is considered to have been made on **January 7, 2016**.

Accordingly, when petitioner filed its administrative claim for refund on **January 7, 2016**, it should have already submitted its complete supporting documents, as well as a statement under oath, attesting to the completeness of the submitted documents, in compliance with RMC No. 54-2014.²⁷ More importantly, petitioner is

²⁶ Resolution dated December 11, 2020, EB Docket, pp. 68 to 72, at 69.

²⁷ "II. *Filing and Processing of Administrative Claims* —

The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a **statement under oath attesting to the completeness of the submitted documents** (Annex "B") x x x."

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barred from submitting any other documents in the course of the evaluation of its claim.

This being the case, the 120-day period from the date of the filing of the administrative claim and submission of complete documents in support thereof, is reckoned from January 7, 2016.

Hence, respondent had 120 days from January 7, 2016, or until May 6, 2016, within which to render a decision on the said claim. However, in this case, there was no full or partial denial of the claim *within* the 120-day period. Rather, the 120-day period lapsed *without* a decision or ruling from the CIR.

For his part, respondent issued the assailed *Letter of Denial*²⁸ only on June 24, 2016, *after* the lapse of the 120-day period within which to decide the claim.


Considering that respondent failed to act on petitioner's claim on or before May 6, 2016, petitioner had 30 days, or until June 5, 2016, within which to file its *judicial claim* before the CTA.

For easy reference, the relevant dates in this case are summarized as follows:

Date of Administrative Claim	End of the 120-day period for the CIR to act on the claim	End of the 30-day period to file judicial claim	Date of Filing of Judicial Claim
January 7, 2016	May 6, 2016	June 5, 2016	August 23, 2016

In the instant case, however, the *Petition for Review*²⁹ was filed before the Court in Division only on August 23, 2016, or way beyond the 30 day period to appeal.

Hence, petitioner's judicial claim was filed out of time, and the Court in Division did not err in dismissing the *Petition for Review* for lack of jurisdiction.

With the foregoing findings, it becomes unnecessary for the Court *En Banc* to address the remaining issues raised in the instant petition. 

²⁸ Exhibit "P-9," Division Docket (CTA Case No. 9436) - Vol. II, pp. 728 to 730.

²⁹ Division Docket (CTA Case No. 9436) - Vol. I, pp. 10 to 26.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The assailed Decision dated August 26, 2020 and the Resolution dated December 11, 2020 rendered by the First Division of this Court in CTA Case No. 9436 are hereby **AFFIRMED**.

SO ORDERED.



ERLINDA P. UY
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

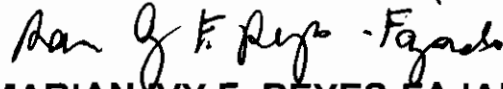

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

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