SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

- *versus* -

BENEDICTA MALLARI and CHI WEI-NENG,
Respondents.

G.R. No. 197164

Present:

PERLAS-BERNABE, *J.*,*
REYES, A., JR.,**
Acting Chairperson,
HERNANDO,
INTING, and
ZALAMEDA,*** *JJ.*

Promulgated:

04 DEC 2019

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DECISION

HERNANDO, *J.*:

At bench is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the May 23, 2011 Decision[2] of the Court of Tax Appeals (CTA) *En Banc* which dismissed the petition for review filed by petitioner, the People, questioning the dismissal of C.T.A. Criminal Case No. O-151 by the CTA First Division in its December 14, 2009 Resolution[3] for failure to obey lawful orders of the court, and the subsequent dismissal of its motion for reconsideration in the CTA Special First Division March 17, 2010 Resolution[4] for being filed out of time.

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* On official business.
** Per Special Order No. 2750 dated November 27, 2019.
*** Designated additional member per Special Order No. 2727 dated October 25, 2019; on official leave.
[1] *Rollo*, pp. 7-40.
[2] Id. at 41-50; penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda I. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Associate Justice Olga Palanca-Enriquez with Dissenting and Concurring Opinion.
[3] Id. at 65-69; penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Lovell R. Bautista and Caesar A. Casanova.
[4] Id. at 59-63.

The Factual Antecedents

On October 23, 2007, pursuant to Revenue Delegation Authority Order (RDAO) No. 2-2007,[5] Regional Director Alfredo V. Misajon (Misajon) of the Bureau of Internal Revenue (BIR), Revenue Region No. 6 of Manila (BIR Manila), filed a criminal complaint[6] against respondents Benedicta Mallari (Mallari) and Chi Wei-Neng (Wei-Neng), President and General Manager, respectively, of Topsun Int'l., Inc. (Topsun) for violation of Section 255 in relation to Sections 253 and 256 of the 1997 National Internal Revenue Code (NIRC) before the Office of the City Prosecutor (OCP) of Manila docketed as I.S. No. 08A-00131. The complaint stemmed from Topsun's outstanding Value Added-Tax (VAT) deficiency for the months of January to June 2000 in the amount of ₱3,827,564.64, and a compromise penalty of ₱25,000.00 for the same period. Topsun failed and refused to pay its outstanding obligations despite several demands and the service of the Warrant of Distraint and/or Levy.

Mallari, in her counter-affidavit,[7] denied that Topsun had any outstanding internal revenue tax liability as evidenced by the Certificate of No Tax Liability[8] dated October 15, 2003 issued by Revenue District Office No. 32.

In the Resolution[9] dated August 7, 2009, Assistant City Prosecutor of Manila Gideon C. Mendoza (ACP Mendoza) found probable cause to indict Mallari and Wei-Neng. He thus recommended the filing of an Information against them for violation of Section 255 in relation to Sections 253 and 256 of the NIRC before the CTA.

An Information[10] was subsequently filed before the CTA First Division which was docketed as Crim. Case No. O-151. It reads:

> The undersigned accuses BENEDICTA MALLARI and CHI WEI-NENG of Violation of Section 255 in relation to Section[s] 253(d) and 256 of the 1997 Tax Code, committed as follows:
>
> That on or about July 9, 2003 and continuously up to the present, in the City of Manila, the said accused, being then the President and General Manager of TOPSUN INTERNATIONAL INC., respectively, with new business address at JMBC Building, Zansibar corner Rockefeller Streets, Barangay San Isidro[,] Makati City, in said City, did then and there willfully, unlawfully fail, refuse and neglect to pay Deficiency Income Tax in the amounts of ₱3,827,564.64 and ₱25,000.00, respectively, due from said corporation for the taxable year 2000 in the total amount of ₱3,852,564.64 under BIR Assessment Notice No. 32-Jan-Jun 2000, despite

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[5] CTA *rollo*, pp. 95-96.
[6] Id. at 7-9.
[7] Id. at 15-18.
[8] Id. at 19.
[9] Id. at 3-6.
[10] Id. at 1-2.

> notice of said assessment, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid sum of ₱3,852,564.64 Philippine Currency.
>
> CONTRARY TO LAW.[11]

Attached to the Information were the following documents, among others:

1. Resolution dated August 7, 2009 of ACP Mendoza;[12]

2. Recommendation dated October 23, 2007 for criminal prosecution by Regional Director Misajon;[13]

3. Affidavit[14] dated October 23, 2007 of Atty. Ramon B. Lorenzo, Attorney I of the Legal Division of Revenue Region No. 6, BIR, Manila with Annexes.

In its Resolution[15] dated October 7, 2009, the CTA First Division observed that in the Department of Justice (DOJ) Resolution dated August 7, 2009, Mallari and Wei-Neng were charged with failure to pay overdue "*deficiency VAT*" in the amount of ₱3,827,564.64 and "*compromise penalty*" of ₱25,000.00. However, the Information stated that they failed to pay "*deficiency income tax*" in the said amounts. Further, the CTA First Division noted that the recommendation for the criminal prosecution or the filing of the criminal information for violation of the Tax Code was without the written approval of the Commissioner of the Internal Revenue (CIR). This approval should have been secured pursuant to Sections 220 and 221 of the NIRC, as amended, in relation to Section 2, Rule 9 of the Revised Rules of the CTA. Lastly, the motion to adopt the allegations contained in the Counter-Affidavit of Mallari, and the Reply to the Counter-Affidavit and its Annexes were not attached to the Information.

Thus, the CTA ordered ACP Mendoza to comply with the following within five days from notice:

> 1. [T]o make the necessary formal correction in the Information against the accused, Benedicta Mallari and Chi Wei-Neng;
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> 2. [T]o submit the recommendation for criminal prosecution of the accused or approval of the filing of Information with the Court by the Commissioner of Internal Revenue;

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[11] Id. at 1.
[12] Id. at 3-6.
[13] Id. at 7-9.
[14] Id. at 10-11.
[15] Id. at 39-43.

3. [T]o present the "Motion to Adopt allegations contained in Counter-Affidavit of Benedicta Mallari" filed by accused Chi Wei-Neng as well as the "Reply to Counter-Affidavit" and its Annexes filed by Atty. Ramon B. Lorenzo; and

4. [T]o present other additional evidence, if any.[16]

Since ACP Mendoza had not yet complied with its October 7, 2009 Resolution, the CTA First Division issued another Resolution[17] on November 10, 2009 reiterating its directives in the October 7, 2009 Resolution. The CTA First Division likewise issued a warning that non-compliance with its orders will result in the dismissal of the case for failure to obey lawful order of the court.

Subsequently, by way of compliance, ACP Mendoza submitted the following: (a) the Amended Information;[18] (b) a certified true copy of RDAO No. 2-2007[19] dated March 1, 2007 of Commissioner Jose Mario C. Bunag of the BIR in lieu of the written approval of the CIR with respect to the filing of the present information; (c) the "Motion to Adopt Allegations Contained in Counter-Affidavit of [Benedicta] Mallari";[20] and (d) the "Reply to Counter-Affidavit"[21] and its annexes.

On November 26, 2009, the CTA First Division issued yet another Resolution[22] noting that ACP Mendoza still failed to attach the CIR's recommendation for criminal prosecution of Mallari and Wei-Neng or the filing of information, among others. As such, it ordered the submission of the required recommendation in accordance with the NIRC.

However, ACP Mendoza, in his Compliance with Manifestation,[23] maintained that the authority of Regional Director Misajon is already sufficient pursuant to RDAO No. 2-2007 which authorizes Regional Directors to approve and sign approval and referral letters to authorize the institution of criminal actions for the National Office of the BIR as required by Section 220 of the NIRC including the filing of information before the courts.

Ruling of the Court of Tax Appeals First Division:

The CTA First Division, in its Resolution dated December 14, 2009, dismissed the criminal complaint for failure of ACP Mendoza to obey a lawful order of the court, *i.e.*, to submit a certified true copy of the Memorandum of the CIR authorizing Regional Director Misajon to prosecute and conduct proceedings. It ruled that RDAO No. 2-2007 is not sufficient as it merely

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[16] Id. at 42-43.
[17] Id. at 45-46.
[18] Id. at 49-50.
[19] Id. at 63-65.
[20] Id. at 73-74.
[21] Id. at 75-76.
[22] Id. at 67-70.
[23] Id. at 71-72.

empowers the signatory to sign approval and referral letters to authorize the institution of the criminal actions as distinguished from the written approval of the CIR to institute the case required under Sections 220 and 221 of the NIRC, as amended, and Section 2, Rule 9 of the Revised Rules of the CTA.

The pertinent portions of the December 14, 2009 Resolution read in this wise:

> It is clear from the foregoing that [RDAO] No. 02-2007 merely empowers the signatory to sign approval and referral letters to authorize the institution of the criminal actions as distinguished from the written approval of the Commissioner of Internal Revenue to institute the case required under Sections 220 and 221 of the NIRC of 1997, as amended, and Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals.
>
> Further, in the case of *People of the Philippines v. Sia, et al.*, wherein the BIR counsels manifested and submitted certified true copies of [RDAO] No. 02-2007 dated March 1, 2007 and a Memorandum dated March 27, 2007 of the Commissioner of Internal Revenue which authorized specific BIR Personnel to prosecute and conduct criminal proceedings involving violations of tax laws, the Court allowed and noted both documents.
>
> In the case at bar, considering that Assistant City Prosecutor Mendoza failed to submit a certified copy of the Memorandum from the Commissioner of Internal Revenue authorizing Regional Director Alfredo V. Misajon to prosecute and conduct criminal proceedings and that he was previously given a non-extendible period of five (5) days to submit the said requirement, the Court cannot countenance the repeated failure to comply with the said order.
>
> WHEREFORE, for failure to obey a lawful order of the Court, the case-in-caption is hereby DISMISSED.
>
> SO ORDERED.[24] (Citation omitted)

ACP Mendoza received the said CTA First Division Resolution on January 13, 2010. Hence, on January 18, 2010, the special counsels/prosecutors of the BIR Manila filed their Entry of Appearance with Leave to Admit Attached Motion for Reconsideration.[25] In the attached Motion for Reconsideration, the prosecution maintained that Regional Director Misajon can sign approval and referral letters to authorize the institution of criminal actions/cases from the regional office with the courts, government agencies, or quasi-judicial bodies under Section 220 of the NIRC. This is in accordance with the delegated authority vested by the CIR to Regional Directors under RDAO No. 2-2007. Further, the March 27, 2007 Memorandum issued by the CIR gives authority to specific BIR legal officers, including Atty. Ramon B. Lorenzo, to prosecute and conduct criminal proceedings with respect to violation of tax laws like in the instant case.

[24] *Rollo*, pp. 68-69.
[25] Id. at 91-94.

The prosecution likewise averred that in *People v. Sia* docketed as C.T.A. Crim. Case No. O-104 dated February 4, 2009, the CTA allowed and noted the certified true copies of RDAO No. 2-2007, and the March 27, 2007 Memorandum of the CIR. Thus, it prayed that it may be allowed to prosecute the accused in the interest of justice.

However, the CTA Special First Division, in its Resolution[26] dated March 17, 2010, denied the Motion for Reconsideration due to late filing. It observed that based on the records, the BIR received its December 14, 2009 Resolution on December 17, 2009, while the Office of the City Prosecutor received the same on December 21, 2009; hence, the prosecution had until January 4, 2010 and January 5, 2010, respectively, to file the Motion for Reconsideration. Regrettably, the prosecution filed its Motion for Reconsideration only on January 18, 2010 or 14 days late beyond the prescribed 15-day period for filing the same. Moreover, it failed to sufficiently explain why it belatedly filed its Motion for Reconsideration which could have allowed the relaxation of the procedural rules. Thus, the Motion for Reconsideration was deemed a mere scrap of paper for having been filed late.

Undaunted, the prosecution filed a Petition for Review[27] before the CTA *En Banc*. It averred that the BIR Manila was not officially notified of the December 14, 2009 Resolution of the CTA First Division. As a result thereof, it was only on January 18, 2010 wherein it filed its entry of appearance with motion to admit the attached motion for reconsideration. Further, the prosecution stressed that the CTA Special First Division erred when it did not consider RDAO No. 2-2007 as basis for the regional directors to institute civil and criminal actions/cases.

Ruling of the Court of Tax Appeals En Banc:

In its Decision[28] dated May 23, 2011, the CTA *En Banc* dismissed the Petition for Review for lack of merit. It affirmed the findings of the CTA Special First Division that ACP Mendoza indeed failed to submit a Memorandum from the CIR authorizing Regional Director Misajon to prosecute and conduct criminal proceedings, in defiance of the lawful order of the CTA First Division. Moreover, the Motion for Reconsideration was belatedly filed. Consequently, the December 14, 2009 Resolution of the CTA First Division has already become final.

Hence, this Petition for Review.

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[26] Id. at 59-63.
[27] Id. at 97-108.
[28] Id. at 41-50.

Issues

The core issues to be resolved by this Court are: (a) whether the Resolution dated December 14, 2009 has already become final; and (b) whether a Regional Director can sign approvals and referral letters to authorize the institution of criminal actions/cases from the regional office with the courts, government agencies, or quasi-judicial bodies without the approval of the CIR.

The Court's Ruling

We **DENY** the petition.

Petitioner avers that the period for the filing of the Motion for Reconsideration has not yet run since it did not receive a proper notice of the December 14, 2009 Resolution of the CTA First Division. Besides, assuming that ACP Mendoza, the deputized special counsel, failed to timely file the said motion, his inadvertence cannot be imputed against the State especially on matters relating to the exercise of its inherent power to tax.

We are not persuaded.

The Motion for Reconsideration was filed beyond the 15-day prescribed period.

Section 1, Rule 15 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the CTA, states that an aggrieved party shall file a motion for reconsideration **within 15 days** from the date he/she received notice of the assailed decision, resolution or order of the court in question.

A perusal of the records shows that the BIR Main Office and the Office of the City Prosecutor received the Notice of the December 14, 2009 Resolution of the CTA First Division on December 17, 2009 and December 21, 2009, respectively. From the date of receipt, petitioner only had until January 4, 2010 and January 5, 2010, respectively, to file its Motion for Reconsideration. Petitioner, however, filed its motion only on January 18, 2010 or 14 days beyond the prescribed period. Thus, we find no cogent reason to depart from the findings of the CTA Special First Division, which was affirmed by the CTA *En Banc*, that petitioner filed its Motion for Reconsideration beyond the 15-day reglementary period.

Consequently, petitioner's failure to duly file on time a Motion for Reconsideration of the CTA First Division's December 14, 2009 Resolution resulted in losing its right to assail the CTA First Division's judgment before this Court. This is in accordance with the basic rule that a party who fails to question an adverse decision by not filing the proper remedy within the period

prescribed by law for the purpose loses the right to do so.[29] As laid down in *Barrio Fiesta Restaurant v. Beronia*:[30]

> For purposes of determining its timeliness, a motion for reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal.[31]

Notice of the December 14, 2009 Resolution of the CTA First Division was properly served to petitioner.

Petitioner claims that the Notice of the CTA First Division Resolution dated December 14, 2009 was not properly served to the designated special prosecutors of the DOJ stated under Department Order No. 86 who would assist in the criminal case filed against Mallari and Wei-Neng, and that it should have been sent to BIR Regional Office in Manila and not to BIR Main Office.

We disagree.

It is settled that when a party is represented by counsel of record, service of orders and notices must be made upon his/her counsels or one of them. Otherwise, notice to the client and to any other lawyer, not the counsel of record, is not notice in law.[32]

Petitioner, through ACP Mendoza, was properly served notice of the December 14, 2009 Resolution of the CTA First Division.

A review of the records shows that the notices of the Resolutions dated October 7, November 10 and 26, 2009, respectively, were duly served on the Office of the City Prosecutor, through ACP Mendoza and now Court of Appeals Associate Justice Jhosep Y. Lopez, and the BIR Main Office, respectively. To note, ACP Mendoza was the same prosecutor who initiated the filing of the Information against Mallari and Wei-Neng for violation of the NIRC before the CTA. Interestingly, there is dearth of records showing that petitioner questioned the services of the notices that were made upon the BIR Main Office and the named city prosecutors in the OCP with respect to the said Resolutions.

It is even more interesting that petitioner's alleged special counsels, Atty. Ramon B. Lorenzo of the BIR Manila and Atty. Mario A. Saldevar, filed

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[29] *Lopez v. Court of Appeals*, G.R. Nos. 163959 & 177855, August 1, 2018.
[30] 789 Phil. 520, (2016).
[31] Id. at 536 citing *Ponciano, Jr. v. Lagula Lake Development Authority*, 591 Phil. 194, 211 (2008) and *The Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, 240 Phil. 703, 711 (1987).
[32] *Cervantes v. City Service Corporation*, 784 Phil. 694, 699 (2016).

an Entry of Appearance with Leave to Admit Attached Motion for Reconsideration only on January 18, 2010. Petitioner did not provide any valid justification as regards their belated entry of appearance. As special counsels, they should have been more vigilant in keeping track of the criminal case filed against Mallari and Wei-Neng as the State stands to suffer injury of failing to claim payment of taxes amounting to several millions of pesos. Hence, the services of notice made to the OCP through ACP Mendoza and the BIR Main Office, respectively, are deemed proper and are thus service of notice to petitioner itself.

The alleged negligence of special counsel, ACP Mendoza, binds petitioner.

Petitioner avers that assuming ACP Mendoza failed to duly file on time the motion for reconsideration, his act cannot be imputed against the State as it concerns the exercise of its inherent power to tax.

Its claim is unmeritorious.

We stress the settled rule that the negligence and mistakes of a counsel are binding on the client. This is so because a counsel, once retained, has the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his/her client, petitioner in this case. As such, any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself/herself.[33]

The alleged negligence of ACP Mendoza binds petitioner.

There is evidence on record indicating that petitioner has been remiss in its duty to maintain communication with its counsel from time to time so as to be aware of the progress of its case. Had petitioner exercised that standard of care "which an ordinarily prudent man bestows upon his business,"[34] then it would have become aware of the previous resolutions issued by the CTA First Division ordering ACP Mendoza to submit the required documents. It did not do so. This only shows that petitioner likewise failed in its duty to keep itself updated as to the status of its case. It should therefore suffer the consequences of the adverse judgment rendered against it. To impute negligence solely on the counsel would result to a never ending suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced or learned.[35]

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[33] *Bejarasco, Jr. v. People*, 656 Phil. 337, 340 (2011).

[34] *Tan v. Court of Appeals*, 524 Phil. 752, 760, citing *Leonardo v. S.T. Best, Inc.*, 466 Phil. 981, 989 (2004); See *Fernandez v. Tan Tiong Tick*, 111 Phil. 773, 779 (1961).

[35] Id.

The December 14, 2009 Resolution of the CTA First Division has already become final.

Consequently, the CTA First Division December 14, 2009 Resolution had already attained finality because of petitioner's failure to file a Motion for Reconsideration within the 15-day reglementary period allowed under the CTA's revised internal rules.

We reiterate the settled pronouncement that "judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The court need not even pronounce the finality of the order as the same becomes final by operation of law."[36]

Thus, since the December 14, 2009 Resolution of the CTA First Division has already attained finality, it now "becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."[37] Although there are recognized exceptions[38] to this rule, petitioner failed to prove that the case falls under any of the instances.

Conclusion

All told, we find that the CTA *En Banc* did not commit any reversible error in upholding the CTA Special First Division Resolution dated March 17, 2010. The December 14, 2009 Resolution of the CTA First Division has already become final because of petitioner's belated filing of its Motion for Reconsideration. By virtue of the doctrine of immutability, the said Resolution can no longer be reviewed nor modified even it is meant to correct an erroneous conclusion of law and facts of the said tax court.

In view of the foregoing, there is no need to resolve the other issues raised by petitioner.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The December 14, 2009 Resolution of the Court of Tax Appeals, First Division, in C.T.A. Crim. Case No. O-151 had lapsed to finality and is already beyond our power to review.

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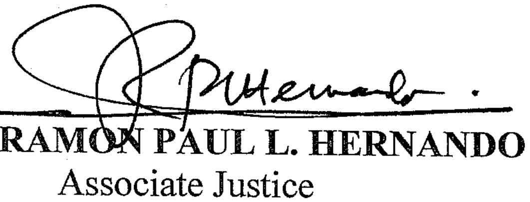
[36] *Philippine Savings Bank v. Papa*, G.R. No. 200469, January 15, 2018.
[37] *Chua v. Commission on Elections*, G.R. No. 236573, August 14, 2018, citing *Navarra v. Liongson*, 784 Phil. 942, 954 (2016).
[38] Id.

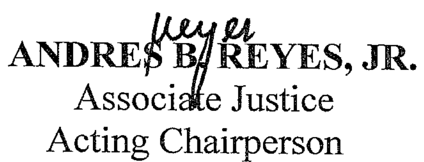
SO ORDERED.



RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

On official business
ESTELA M. PERLAS-BERNABE
Associate Justice



ANDRES B. REYES, JR.
Associate Justice
Acting Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

On official leave
RODIL V. ZALAMEDA
Associate Justice

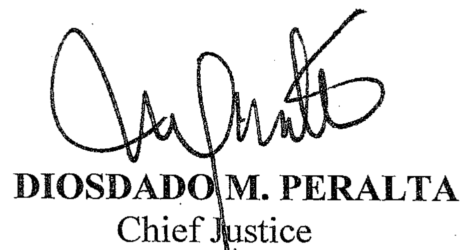
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANDRES B. REYES, JR.
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice