Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

V.Y. DOMINGO JEWELLERS, INC.,
Respondent.

G.R. No. 221780

Present:

PERALTA, *J.*, *Chairperson*,
LEONEN,*
REYES, A., JR.,
HERNANDO, and
CARANDANG,** *JJ.*

Promulgated:

March 25, 2019

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DECISION

PERALTA, *J.*:

This is petition for review on *certiorari* under Rule 45 seeking to reverse and set aside the Court of Tax Appeals (*CTA*) *En Banc* Decision[1] dated July 1, 2015 in CTA EB Case No. 1170, which granted respondent V.Y. Domingo Jewellers, Inc.'s *(V.Y. Domingo)* petition for review, and ordered the remand of the case to the CTA First Division for further proceedings; and the Resolution[2] dated December 3, 2015 which denied petitioner Commissioner of Internal Revenue's *(CIR)* motion for reconsideration.

The facts are as follows:

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* On wellness leave.

** Designated Additional Member per Special Order No. 2624 dated November 28, 2018

1 Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban concurring, with Presiding Justice Roman G. Del Rosario, and Associate Justices Erlinda P. Uy, and Cielito N. Mindaro-Grulla dissenting; *rollo*, pp. 37-51.

2 *Id.* at 56-62.

On September 9, 2009, the Bureau of Internal Revenue *(BIR)* issued a Preliminary Assessment Notice[3] *(PAN)* against V.Y. Domingo, a corporation primarily engaged in manufacturing and selling emblematic jewelry, assessing the latter the total amount of ₱2,781,844.21 representing deficiency income tax and value-added tax, inclusive of interest, for the taxable year 2006.

V.Y. Domingo filed a Request for Re-evaluation/Re-investigation and Reconsideration[4] dated September 17, 2009 with the Regional Director of BIR – Revenue Region No. 6, requesting a "thorough re-evaluation and re-investigation to verify the accuracy of the computation as well as the accounts included in the Preliminary Assessment Notice."

V.Y. Domingo then received a Preliminary Collection Letter[5] *(PCL)* dated August 10, 2011 from the Revenue District Office *(RDO)* No. 28 - Novaliches, informing it of the existence of Assessment Notice No. 32-06-IT-0242 and Assessment Notice No. 32-06-VT-0243, both dated November 18, 2010, for collection of its tax liabilities in the amounts of ₱1,798,889.80 and ₱1,365,727.63, respectively, for a total amount of ₱3,164,617.43. The PCL likewise stated:

> If you want to know the details and/or settle this assessment, may we invite you to come to this office, within ten (10) days from receipt of this notice. However, if payment had already been made, please send or bring us copies of the receipts of payment together with this letter to be our basis for canceling/closing your liability/ies.
>
> We will highly appreciate if you can give this matter your preferential attention, otherwise we shall be constrained to enforce the collection thereof thru Administrative Summary Remedies provided for by the law, without further notice.[6]

On September 12, 2011, V.Y. Domingo sent a letter to the BIR Revenue District Office No. 28 in Quezon City, requesting certified true copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243. Upon receipt of the requested copies of the notices on September 15, 2011, V.Y. Domingo filed on September 16, 2011 a Petition for Review[7] with the CTA in Division, under Section 7(1) of RA No. 1125 and Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals *(RRCTA)*, praying that Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 and the PCL dated August 10, 2011 be declared null and void, cancelled, withdrawn, and with no force and effect, for allegedly having been issued beyond the prescriptive period for assessment and collection of internal revenue taxes.

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3 *Rollo*, pp. 63-64.
4 *Id.* at 66.
5 *Id.* at 68.
6 *Id.*
7 *Id.* at 69-89.

During trial, the CIR filed her Motion to Dismiss[8] the petition for lack of jurisdiction. She argued that under Republic Act *(R.A)* No. 1125 *("An Act Creating the Court of Tax Appeals")*, as amended, and the RRCTA, it is neither the assessment nor the formal letter of demand that is appealable to the CTA but the decision of the CIR on a disputed assessment. Claiming that V.Y. Domingo's petition was anchored on its receipt of the PCL, which it treated as a denial of its Request for Re-evaluation/Re-investigation and Reconsideration, the CIR further argued that there was no disputed assessment to speak of, and that the CTA had no jurisdiction to entertain the said Petition for Review.

In a Resolution[9] dated January 29, 2014, the CTA First Division granted the CIR's motion and dismissed V.Y. Domingo's Petition for Review. It held that it was without jurisdiction to entertain the petition, as the rule is that for the CTA to acquire jurisdiction, as assessment must first be disputed by the taxpayer and either ruled upon by the CIR to warrant a decision, or denied by the CIR through inaction. The CTA First Division ruled that what were appealed to it were the subject assessments, not a decision or the CIR's denial of its protest; thus, the said assessments had attained finality, and the CTA in Division was without jurisdiction to entertain the appeal.

V.Y. Domingo's motion for reconsideration having been denied in a Resolution dated April 23, 2014, it filed on May 30, 2014 a petition for review before the CTA *En Banc*. It argued that the CTA First Division erred when it upheld the CIR's position that V.Y. Domingo should have administratively protested the Assessment Notices first before filing its Petition for Review. Furthermore, V.Y. Domingo claimed that it was denied due process when the CIR failed to send the Notice of Final Assessment to it.

In its Decision dated July 1, 2015, the CTA *En Banc* granted V.Y. Domingo's Petition for Review, reversing and setting aside the January 29, 2014 and April 23, 2014 Resolutions of the CTA First Division. It remanded the case to the CTA First Division for further proceedings to afford the CIR full opportunity to present her evidence. It held —

> Petitioner's case did not fall within the usual procedure in the issuance of an assessment as respondent failed to serve or send the FAN to petitioner. Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations No. 12-99 are silent as to the procedure to be followed in case the taxpayer did not receive the FAN but instead receives a preliminary collection letter or a warrant of distraint/levy or similar communications, informing the taxpayer of the existence of a FAN for the first time. Understandably, this would cause some confusion as to what the

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8 *Id.* at 92-99.

9 Penned by Associate Justice Erlinda P. Uy, with Associate Justices Roman G. Del Rosario and Cielito N. Mindaro-Grulla concurring, *id.* at 105-115.

> next step it. Hence, petitioner cannot be faulted for not filing an administrative protest before filing a petition for review before the Court in Division since it did not receive the FAN and the language of the PCL shows that the respondent is already demanding payment from petitioner presupposing that the assessment has become final.[10]

Thus, the present petition raising the sole issue of whether the First Division of the CTA has jurisdiction to entertain V.Y. Domingo's petition for review.

The CIR argues that assessment notices are not appealable to the CTA as the power to decide disputed assessments is vested in the CIR, subject only to the exclusive appellate jurisdiction of the CTA. The CIR adds that a thorough review of V.Y. Domingo's petition for review before the CTA First Division would readily show that it was an *original protest* on the assessment made by the petitioner, a matter that, under R.A. No. 1125, is not within the jurisdiction of the CTA.

The CIR likewise claims that a close scrutiny of V.Y. Domingo's petition for review before the CTA would reveal that it was anchored on its receipt of the PCL issued by the BIR, which V.Y. Domingo mistakenly treated as a denial of its motion for reinvestigation of the PAN.[11] Before V.Y. Domingo filed its petition for review before the CTA First Division on September 16, 2011, it had already received copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 and the Formal Letter of Demand *(FLD)* dated September 9, 2010. However, instead of challenging the contents of the said assessment notices by filing the appropriate protest or motion for reinvestigation within thirty (30) days from September 15, 2011, the date it received the copies of the notices, the CIR laments that V.Y. Domingo opted to immediately institute a petition for review on the basis of the PCL.[12] This, argues the CIR, is in clear violation of the doctrine of exhaustion of administrative remedies.

This Court, through a Resolution[13] dated March 7, 2016, required respondent V.Y. Domingo to comment on the Petition for Review.

In its Comment,[14] V.Y. Domingo contends that contrary to the CIR's allegation, the CTA has jurisdiction to take cognizance of its Petition for Review. Citing Section 7 of R.A. No. 1125, as amended, V.Y. Domingo suggests that the CIR may have disregarded the fact that the jurisdiction of the CTA is not limited to review of decisions of the CIR in cases involving disputed assessments only, but also includes "other matters arising under the

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10 *Id.* at 49.
11 *Id.* at 23.
12 *Id.* at 24-25.
13 *Id.* at 116.
14 *Id.* at 117-149.

National Internal Revenue or other laws administered by the Bureau of Internal Revenue."[15] V.Y. Domingo reiterates that its case does not involve an appeal from a decision of the CIR on a disputed assessment since in the first place, there is no "disputed" assessment to speak of.[16]

Furthermore, V.Y. Domingo also claims that the tenor of the PCL forecloses any opportunity for it to file its administrative protest as a reading of the same will show that the CIR had already decided to deny any protest as regards the assessment made against the respondent taxpayer.[17]

We rule for the petitioner.

At the outset, it bears emphasis that the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[18] Section 7 of R.A. No. 1125, as amended by R.A. No. 9282, specifically provides:

> SEC. 7. *Jurisdiction.* — **The CTA shall exercise:**
>
> (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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> x x x.[19]

In relation thereto, Section 228 of R.A. No. 8424 or *The Tax Reform Act of 1997*, as amended, implemented by Revenue Regulations No. 12-99,[20] provides for the procedure to be followed in issuing tax assessments and in protesting the same. Thus:

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15 *Id.* at 122.
16 *Id.* at 124-125.
17 *Id.* at 125-126.
18 *CIR v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 746 Phil. 139, 152 (2014).
19 Emphasis supplied.
20 Dated September 6, 1999.

Section 228. *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:** *Provided, however*, That a pre-assessment notice shall not be required in the following cases:

> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
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> (d) When the excise tax due on excisable articles has not been paid; or
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> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice.

If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[21]

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21 Emphasis ours.

On the other hand, Section 3.1.5 of Revenue Regulations No. 12-99,[22] implementing Section 228 above, provides:

> 3.1.5. Disputed Assessment. — **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof**. . .
>
> x x x x
>
> **If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.**
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
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> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final executory and demandable: *Provided,* however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
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> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise the assessment shall become final, executory and demandable. *(Emphasis ours)*

It is clear from the said provisions of the law that a protesting taxpayer like V.Y. Domingo has only three options to dispute an assessment:

1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest;

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22 *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty*. September 6, 1999.

2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest;

3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.[23]

In this case, records show that on August 11, 2011, V.Y. Domingo received the PCL issued by petitioner CIR informing it of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010. On September 12, 2011, the former sent a letter request to the BIR requesting for certified true copies of the said Assessment Notices.

However, instead of filing an administrative protest against the assessment notice within thirty (30) days from its receipt of the requested copies of the Assessment Notices on September 15, 2011, V.Y. Domingo elected to file its petition for review before the CTA First Division on September 16, 2011, ratiocinating that the issuance of the PCL and the alleged finality of the terms used for demanding payment therein proved that its Request for Re-evaluation/Re-investigation and Reconsideration had been denied by the CIR.

That V.Y. Domingo believed that the PCL "undeniably shows" the intention of the CIR to make it as its final "decision" did not give it cause of action to disregard the procedure set forth by the law in protesting tax assessments and act prematurely by filing a petition for review before the courts. The word "decisions" in the aforementioned provision of R.A. No. 9282 has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the assessments.[24] Definitely, said word does not signify the assessment itself.[25] Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the CTA only upon receipt of the decision of the Collector on the disputed assessment.[26]

Admitting for the sake of argument the claim of V.Y. Domingo in its Comment — that its case does not involve an appeal from a decision of the CIR on a disputed assessment since in the first place, there is no "'disputed'

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23 *Philippine Amusement and Gaming Corp. v. Bureau of Internal Revenue, et al.*, 779 Phil. 547, 558 (2016).

24 *Allied Banking Corporation v. Commissioner of Internal Revenue*, 625 Phil. 530, 538 (2010).

25 *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, 683 Phil. 430, 440 (2012).

26 *Id.*

assessment to speak of" — admits the veracity of petitioner CIR's claim: there being no disputed assessment to speak of when V.Y. Domingo filed its petition for review before the CTA First Division, the latter had no jurisdiction to entertain the same. Thus, the latter's dismissal of the petition for review was proper.

Evidently, V.Y. Domingo's immediate recourse to the CTA First Division was in violation of the doctrine of exhaustion of administrative remedies.

Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her.[27] Section 228 of the Tax Code requires taxpayers to exhaust administrative remedies by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment.[28] Exhaustion of administrative remedies is required prior to resort to the CTA precisely to give the Commissioner the opportunity to "re-examine its findings and conclusions" and to decide the issues raised within her competence.[29]

V.Y. Domingo posits that its case is an exception to the rule on exhaustion of administrative remedies and the rule on primary jurisdiction as it cannot be expected to be able to file an administrative protest to the Assessment Notices which it never received.[30] It expressly admitted that it did not file an administrative protest, based on its alleged non-receipt of the same.[31] Citing the case of *Allied Banking Corporation v. CIR*,[32] wherein this Court ruled that the filing of therein petitioner of a petition for review with the CTA without first contesting the FAN issued against it was an exception to the rule on exhaustion of administrative remedies, V.Y. Domingo maintains that in its case, the CIR was similarly estopped from claiming that the filing of the petition for review was premature.

However, as previously mentioned, the records of the case show that V.Y. Domingo did receive the certified true copies of the Assessment Notices it requested on September 15, 2011, the day before it filed its petition for review before the CTA First Division. V.Y. Domingo cannot now assert that its recourse to the court was based on its non-receipt of the Assessment Notices that it requested.

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27 *Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc.*, 645 Phil. 324, 331 (2010).

28 *CIR v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

29 *Id.*

30 *Rollo*, p. 125.

31 *Id.* at 124.

32 *Supra* note 24, at 541-542.

Likewise, this Court cannot apply the ruling in *Allied Banking Corporation v. CIR*,[33] wherein the demand letter sent by the CIR was worded as follows:

> It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree, you may appeal the final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable.[34]

The ruling of this Court in the said case was grounded on the language used and the tenor of the demand letter, which indicate that it was the final decision of the CIR on the matter. The words used, specifically the words "final decision" and "appeal," taken together led therein petitioner to believe that the Formal Letter of Demand with Assessment Notices was, in fact, the final decision of the CIR on the letter-protest it filed and that the available remedy was to appeal the same to the CTA.[35]

Comparing the wording of the above-quoted demand letter with that sent by the CIR to V.Y. Domingo in the instant case, it becomes apparent that the latter's invocation of the ruling in the *Allied Banking Corporation* case in misguided as the foregoing statements and terms are not present in the subject PCL dated August 10, 2011.

What is evident in the instant case is that Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 have not been disputed by V.Y. Domingo at the administrative level without any valid basis therefor, in violation of the doctrine of exhaustion of administrative remedies. To reiterate, what is appealable to the CTA are decisions of the CIR on the protest of the taxpayer against the assessments. There being no protest ruling by the CIR when V.Y. Domingo's petition for review was filed, the dismissal of the same by the CTA First Division was proper. As correctly put by Associate Justice Roman G. Del Rosario in his Dissenting Opinion, "(C)learly, petitioner did not exhaust the administrative remedy provided under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 which is fatal to its cause. Consequently, the non-filing of the protest against the FLD let to the finality of the assessment."[36]

WHEREFORE, in view of the foregoing, the Court **GRANTS** the petition for review on *certiorari*. The assailed July 1, 2015 Decision and December 3, 2015 Resolution of the Court of Tax Appeals *En Banc* are hereby **REVERSED** and **SET ASIDE**, and the January 29, 2014 and April

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33 *Allied Banking Corporation v. CIR, supra* note 24.
34 *Id.* at 535.
35 *Id.* at 544.
36 *Rollo*, p. 54.

23, 2014 Resolutions of the First Division of the Court of Tax Appeals are **REINSTATED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

On wellness leave
MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
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.

DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.

LUCAS P. BERSAMIN
Chief Justice