Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MINDANAO II GEOTHERMAL PARTNERSHIP [now AXIA POWER HOLDINGS PHILIPPINES CORPORATION], Petitioner,	**G.R. No. 227932**
-versus-	Present: LEONEN, *SAJ., Chairperson,* LAZARO-JAVIER,* LOPEZ, M., LOPEZ, J., *and* KHO, JR., *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 0 8 2023

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D E C I S I O N

LOPEZ, M., *J.*:

A short period return is required to be filed only in two instances: one, when a taxpayer, other than an individual, changes the accounting period[1] and two, when a separate final or adjustment return for a fractional part of the taxable year will be made.[2] In case of a corporation contemplating dissolution,

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* Acting Chairperson

1 TAX CODE, sec. 47(A).
Section 47. *Final or Adjustment Returns for a Period of Less than Twelve (12) Months.*
(A) ***Returns for Short Period Resulting from Change of Accounting Period.*** – If a taxpayer, other than an individual, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year, a separate final or adjustment return shall be made for the period between the close of the last fiscal year for which return was made and the following December 31. If the change is from calendar year to fiscal year, a separate final or adjustment return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. If the chane is from one fiscal year to another fiscal year, a separate final or adjustment return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year.

2 TAX CODE, sec. 47(B).
Section 47. . . .
(B) **Income Computed on Basis of Short Period.** – Where a separate final or adjustment return is made under Subsection (A) on account of a change in the accounting period, and in all other cases where a separate final or adjustment return is required or permitted by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, to be made for a fractional part of a

the law requires the corporation to render a *correct return* within 30 days after its adoption of a resolution or plan for its dissolution.[3] The return to be filed shall be a *short period* return when the taxable year was shortened because of the dissolution; otherwise, a *regular return* is sufficient.

For the Court's resolution is a Petition for Review on *Certiorari*[4] under the Rules of Court, Rule 45 filed by Mindanao II Geothermal Partnership (M2GP) assailing the Court of Tax Appeals (CTA) *En Banc*'s Decision[5] dated April 20, 2016 and Resolution[6] dated October 24, 2016 in CTA EB No. 1206. The assailed issuances denied M2GP's claim for refund or issuance of a tax credit certificate (TCC) in the total amount of PHP 7,186,586.00,[7] representing its excess income tax payments for calendar years (CYs) 2008 and 2009.

Antecedents

M2GP is a general partnership primarily engaged in the development, financing, construction, ownership, operation, maintenance, and transfer of geothermal electrical generation with a plant located at the Mindanao Geothermal Reservation, North Cotabato. The general partners in M2GP were Marubeni Pacific Energy Holdings Corporation (MPEHC) and Marubeni Pacific II Energy Holdings Corporation (MP2EHC). M2GP was one of the generation companies under Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, whose sales of generated power are subject to value-added tax zero-rated.[8]

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year, then the income shall be computed on the basis of the period for which separate final or adjustment return is made.

3 TAX CODE, sec. 52(C).
Section 52. *Corporation Returns.*
(C) **Return of Corporation Contemplating Dissolution or Reorganization.** – Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the commissioner, shall, by rules and regulations, prescribe.
The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.

4 *Rollo*, pp. 36–73.

5 *Id.* at 9–27. The April 20, 2016 Decision in CTA *EB* No. 1206 (CTA Case No. 8251) was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban of the *En Banc*, Court of Tax Appeals, Quezon City.

6 *Id.* at 29–33. The October 24, 2016 Resolution in CTA *EB* No. 1206 (CTA Case No. 8251) was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla of the *En Banc*, Court of Tax Appeals, Quezon City. Associate Justices Erlinda P. Uy and Ma. Belen M. Ringpis-Liban were on leave.

7 For Calendar Year (CY) 2008 the amount for refund being claimed by M2GP is PHP 4,440,160.00. For CY 2009 the amount being claimed for refund is PHP 2,746,426.31. *Id.* at 11–13.

8 *Id.* at 10.

On April 15, 2009, M2GP filed its Annual Income Tax Return (Annual ITR) for CY 2008, reporting a gross income of PHP 91,921,398.00. The income was subject to the creditable withholding tax (CWT), however, M2GP was unable to utilize the income taxes withheld; hence, resulting in excess income tax payments of PHP 27,307,745.00.[9] M2GP did not mark any chosen option in its 2008 Annual ITR as regards the income tax overpayment, but it reflected the amount as "Prior Year's Excess Credits" in its Annual ITR for CY 2009.[10]

On *December 22, 2009*, the Board of Directors and Stockholders of Marubeni Energy Services Corporation (MESC), MPEHC, and MP2EHC approved their merger with Axia Power Holdings Philippines Corporation (Axia), with Axia as the surviving entity. On account of the merger, MPEHC withdrew as a general partner in M2GP on *January 1, 2010.*[11]

On March 29, 2010, the Securities and Exchange Commission (SEC) issued a Certification, certifying that an Affidavit of Withdrawal was executed by one of M2GP's partners, thereby technically dissolving the partnership.[12] Consequently, on *April 12, 2010*, M2GP filed a letter-request to the Bureau of Internal Revenue (BIR) for the cancellation of its registration and Tax Identification Number (TIN), and the issuance of TCC.[13]

On even date, M2GP filed its Annual ITR for CY 2009, reporting no income tax liability. M2GP marked the boxes corresponding to the options to be refunded and to be issued a TCC in the amount of PHP 2,746,426.31 in its ITR.[14] M2GP also filed with the BIR its administrative claim for refund or issuance of a TCC for its excess CWT for CY 2008 in the amount of PHP 4,440,160.00 and PHP 2,746,426.31 for 2009, in the total amount of PHP 7,186,586.00.[15]

Despite several follow-ups, M2GP failed to obtain a tax clearance from the BIR, nor action on its refund claim.[16] As the prescriptive period for filing a claim for refund was about to close on M2GP, it filed its judicial claim with the CTA Division on March 31, 2011, docketed as CTA Case No. 8251.[17]

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9 *Id.* at 11. The PHP 27,307,745.00 represents the sum of prior year's excess tax credits of PHP 22,867,594.00, which was the subject of separate judicial claim for refund or tax credit and excess tax credits for the CY 2008 in the amount of PHP 4,440,160.00. *Id.* at 10–30.
N.B. The Court affirmed the tax court's Decision denying M2GP's claim for refund or issuance of TCC in the amount of PHP 22,867,594.00 in *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. No. 221692, July 25, 2016 [Notice, First Division].

10 *Rollo*, p. 11.

11 *Id.* at 10–11.

12 *Id.* at 11.

13 *Id.* at 11, 180.

14 *Id.* at 40–41.

15 *Id.* at 41-42.

16 *Id.* at 11.

17 *Id.* at 41–42.

Findings of the CTA

On February 27, 2014, the CTA Division denied M2GP's claim.[18] For CY 2008 refund claim, the CTA Division observed that M2GP exercised its right to carry over the excess CWT of PHP 4,440.160.00 to the succeeding taxable year, 2009. Under the National Internal Revenue Code of 1997 (Tax Code), Section 76,[19] the option to carry-over is considered irrevocable for the taxable period, and M2GP may no longer claim a refund or the issuance of a TCC. The CTA Division ruled that the exception to the irrevocability rule enunciated by the Court in *Systra Philippines, Inc. v. Commissioner of Internal Revenue*[20] does not apply to M2GP because it did not present a TCC from the BIR and a Certificate of Dissolution from the SEC. These are the requirements for it to be considered legally dissolved for tax purporses under the Tax Code, Sections 52(C)[21] and 235(e).[22] In view thereof, the CTA Division no longer discussed whether M2GP established the requisites for its refund claim.

For M2GP's CY 2009 refund claim, the CTA Division held that M2GP can validly claim a refund amounting to PHP 2,746,426.31 because it marked the boxes corresponding to the options to be refunded and to be issued a TCC

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[18] *Id.* at 169–199. The February 27, 2014 Decision in CTA Case No. 8251 was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Associate Justice Erlinda P. Uy. Presiding Justice Roman G. Del Rosario, Chairperson, 1st Division, had a separate Concurring and Dissenting Opinion, *id.* at 200–204. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED. (Emphasis in the original)

[19] **Section 76. *Final Adjustment Return.*** – . . .

. . . .

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid during the year, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income taxes paid against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor[.]

[20] 560 Phil. 261 (2007) [Per J. Corona, First Division]. Where, however, the corporation permanently ceases its operations before full utilization of the tax credits it opted to carry over, it may then be allowed to claim the refund of the remaining tax credits. In such a case, the remaining tax credits can no longer be carried over and the irrevocability rule ceases to apply. *Cessante ratione legis, cessat ipse lex. Id.* at 274, note 23.

[21] **Section 52. *Corporation Returns.*** –

(C) Return of Corporation Contemplating Dissolution or Reorganization.– Every corporation shall, within thirth (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution byh the Securities and Exchange Commission, or for its reorganization, render a correct return to Commissioner, verified under oath, setting forth the terms of such resolutionor plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.

The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.

[22] **Section 235. *Preservation of Books of Accounts and Other Accounting Records.*** – . . .

(e) . . . Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.

in its 2009 Annual ITR.[23] Regardless, the CTA Division still denied M2GP's CY 2009 refund claim for failure to show that the income payment received was declared as part of the gross income.

M2GP's Motion for Reconsideration was denied,[24] hence, it elevated the matter to the CTA *En Banc* and docketed as CTA EB No. 1206.

On April 20, 2016, the CTA *En Banc* rendered the assailed Decision,[25] partly granting M2GP's arguments but ultimately denying its refund claim. As regards the CY 2008 refund claim, the CTA *En Banc* held that M2GP can validly claim exception to the irrevocability rule because it showed that it was already dissolved based on its documentary and testimonial evidence. For CY 2009, the CTA *En Banc* ruled that M2GP was able to establish its compliance with the requirements for a CWT refund. Nevertheless, the CTA *En Banc*, applying *Bank of the Philippine Islands v. Commissioner of Internal Revenue* (*BPI*),[26] denied both claims because M2GP did not file a short period return covering the period January 1, 2010 to March 29, 2010, within 30 days from the SEC's approval of its dissolution. The CTA *En Banc* ratiocinated that without the short period return, it cannot ascertain whether there still exists a tax overpayment upon dissolution. Thus:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
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> **SO ORDERED**.[27] (Emphasis in the original)

M2GP sought reconsideration, but the CTA *En Banc* denied it on October 24, 2016, for lack of merit.[28] Unsatisfied, M2GP filed the present Petition before the Court.

M2GP insists that the tax court should not have applied the *BPI* case as the factual circumstances of its case are different from that of *BPI*. Further, a short period return covering January 1 to March 31, 2010, is not necessary since M2GP was dissolved on December 22, 2009, when MESC, MPEHC, and MP2EHC merged with Axia. More importantly, M2GP ceased operations on June 18, 2009, when the Build Operate and Transfer Agreement with the

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23 *Rollo*, pp. 41–42.

24 *Id.* at 206–210. The July 24, 2014 Resolution in CTA Case No. 8251 was penned by Associate Justice Cielito N. Mindaro-Grulla and Erlinda P. Uy of the First Division, Court of Tax Appeals, Quezon City. Presiding Justice Roman G. Del Rosario maintained his Concurring and Dissenting Opinion in the February 27, 2014 Decision in CTA Case No. 8251 of the First Division, Court of Tax Appeals, Quezon City.

25 *Id.* at 9–27.

26 416 Phil. 345 (2001) [Per J. Mendoza, Second Division].

27 *Rollo*, p. 26.

28 *Id.* at 29–33.

Energy Regulatory Commission expired on June 17, 2009. Thus, there is nothing to report for the period of January 1 to March 31, 2010.[29]

Through the Office of the Solicitor General, the Commissioner of Internal Revenue (CIR) counters that M2GP is required to file a short period return under the Tax Code, Section 52(C) and 235(e).[30] The rationale for this is that corporations and partnerships contemplating dissolution must notify the CIR in the manner provided by law, and shall not be dissolved until cleared of any tax liability. The CIR avers that the filing of a short period return is not contingent on whether the dissolved corporation earned income or not on the calendar year it was dissolved. A taxpayer may simply claim that it did not earn income, and then proceed to file a claim for refund, without enabling the CIR to ascertain whether tax is still due based on the adjusted and audited figures.[31]

The CIR further asserts that M2GP failed to inform them of its dissolution in the manner required by the Tax Code, Sections 52(C) and 235(e) (i.e., M2GP needs to secure a TCC and secure a Certificate of Dissolution from the SEC). This is fatal to its CY 2008 and 2009 refund claims as dissolving corporations must abide by the requirements of the law before they could be considered legally dissolved for tax purposes. In view of M2GP's non-compliance, it is not deemed dissolved within the context of the 1997 Tax Code and consequently, M2GP cannot claim refund of its excess CWT.[32]

Issues

Essentially, the issues are: (1) whether the exception to the irrevocability rule applies to M2GP; and (2) whether M2GP is required to file a short period return for the period from January 1, 2010 to March 29, 2010 as a precondition to its claim for refund of its excess CWT for CYs 2008 and 2009.

Ruling

The Petition is meritorious.

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[29] *Id.* at 45–48.

[30] **Section 235.**

. . . .

(e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their bocks of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.

[31] *Id.* at 473–487. Comment of the Commissioner of Internal Revenue.

[32] *Id.* at 487–489.

M2GP's refund claim for CY 2008 falls within the exception to the irrevocability rule

At the outset, we hold that the CTA *En Banc* correctly concluded that M2GP's claim for refund or the issuance of TCC representing its excess CWT for *CY 2008* falls under the exception to the irrevocability rule[33] embodied in the Tax Code, Section 76:

> **Section 76.** Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> (A) Pay the balance of tax still due; or
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> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid during the year, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. *Once the option to carry-over and apply the said excess quarterly income taxes paid against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period* and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor. Provided, that in case the taxpayer cannot carry over the excess income tax credit due to dissolution or cessation of business the taxpayer shall file an application for refund of any unutilized excess income tax credit, and the Bureau of Internal Revenue shall decide on the application and refund the excess taxes within two (2) years from the date of the dissolution or cessation of business. (Emphasis supplied)

Thus, corporations with excess income taxes may either carry over the excess credit to the succeeding taxable quarters or years or claim a refund or request for the issuance of a TCC. The option to carry over its excess credit is irrevocable for the taxable period and the corporation may no longer claim a refund or request for the issuance of a TCC.

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[33] Where, however, the corporation permanently ceases its operations before full utilization of the tax credits it opted to carry over, it may then be allowed to claim the refund of the remaining tax credits. In such a case, the remaining tax credits can no longer be carried over and the irrevocability rule ceases to apply. *Cessante ratione legis, cessat ipse lex. Systra Philippines, Inc. v. Commissioner of Internal Revenue*, 560 Phil. 261, 274 (2007) [Per J. Corona, First Division].

The irrevocability rule is the norm, but there is an exception. In *Systra Philippines, Inc. v. Commissioner of Internal Revenue* (*Systra*),[34] the Court clarified that when a corporation *permanently ceases its operation* before full utilization of the tax credits, it may be allowed to refund the remaining tax credits that can no longer be carried over. The irrevocability rule does not apply since it is impossible for the dissolved corporation to carry over the excess CWT. *Cessante ratione legis, cessant ipse lex* – the reason of the law ceasing, the law itself also ceases.

Here, M2GP was automatically dissolved upon MPEHC's withdrawal from the partnership on January 1, 2010.[35] On March 29, 2010, the SEC issued a certification stating that an Affidavit of Withdrawal was executed by one of the two partners of M2GP, thereby technically dissolving the partnership. Consequently, M2GP requested the BIR to cancel its Certificate of Registration and its TIN and to issue a tax clearance.[36] For sure, a dissolved entity may not undertake any activity other than the winding up of the business.[37] M2GP has permanently ceased operations. The CTA *En Banc*

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[34] *Id.*

[35] CIVIL CODE, arts. 1828, 1830.
Article 1828. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.
Article 1830. Dissolution is caused:
(1) Without violation of the agreement between the partners:
. . . .
(b) By the express will of any partner, who must act in good faith, when no definite term or particular undertaking is specified[.]

[36] *Rollo*, pp. 11.

[37] CIVIL CODE, arts. 1829, 1832, 1834.
Article 1829. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.
Article 1832. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:
(1) With respect to the partners,
(a) Whe the dissolution is not by the act, insolvency or deathe of a partner; or
(b) When the dissolution is by such act, insolvency or death of a partner, in cases where Article 1833 so requires;
(2) With respect to persons not partners, as declared in Article 1834.
Article 1834. After dissolution, a partner can bind the partnership, except as provided in the third paragraph of this article:
(1) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;
(2) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:
(a) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or
(b) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.
The liability of a partner under the first paragraph, No. 2, shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:
(1) Unknown as a partner to the person with whom the contract is made; and
(2) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.
The partnership is in no case bound by any act of a partner after dissolution:
(1) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or
(2) Where the partner has become insolvent; or

aptly held that in these circumstances, it would be impossible for M2GP to carry over its excess CWT to the succeeding years.

The CIR argues that M2GP must present a tax clearance certificate to apply the exception to the irrevocability rule. Simply put, the CIR requires M2GP to be legally dissolved for tax purposes to remove it from the application of the irrevocability rule. We disagree. For one, *Systra* does not require prior clearance from the BIR that the dissolving entity had completely paid off its tax liabilities before it may be allowed to claim the refund of the remaining tax credits. The corporation must only prove that it has *permanently ceased its operations*.

Next, a tax clearance certificate is proof that an entity is cleared of its tax liabilities,[38] and thus, considered dissolved for tax purposes.[39] However, an entity contemplating dissolution may have permanently ceased operations but not yet cleared by the BIR of its tax obligations. Nonetheless, the absence of a tax clearance does not prevent the entity from claiming refund of excess CWT. The Court clarified this in *Axia Power Holdings Philippines Corporation v. Commissioner of Internal Revenue (Axia),*[40] to wit:

> *[T]he purpose of the tax clearance requirement under Sec. 52 (c) of the NIRC is to ensure that a corporation contemplating dissolution does not renege on its tax liabilities and thereby irreparably deprive the government of much needed revenues. Consequently, Sec. 235 (e) prevents the corporation from being dissolved without having been cleared by the BIR. In light of the purpose of the law, We hold that [a corporation] is considered* ***not*** *dissolved prior to its obtaining a tax clearance, but* ***only*** *for tax purposes.*
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> Not only is this interpretation within the spirit of the NIRC, it is also similar to Sec. 122 of the Corporation Code which allows a corporation whose corporate existence has been terminated to nonetheless continue performing limited activities for a period of [3] years from its dissolution[.]
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> . . . .

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(3) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who —
   (a) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or
   (b) Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in the first paragraph, No. 2(b).

Nothing in this article shall effect the liability under Article 1825 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

38 *Philippine Deposit Insurance Corporation v. Bureau of Internal Revenue*, 540 Phil. 142, 153 (2006) [Per J. Chico-Nazario, First Division].

39 *Axia Power Holdings Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 230847 October 14, 2020 [Notice, Third Division].

40 *Id.*

> If a corporation is allowed to carry on certain activities for its own benefit and the benefit of its stakeholders after dissolution under the above circumstances, *there should be nothing to prevent a corporation from maintaining a limited existence if only to serve the public interest in settling its tax liabilities.*
>
> In sum, [w]e hold that [*a corporation*] *was not yet dissolved for tax purposes prior to its obtaining a tax clearance, and thus had legal personality as of April 15, 2010 to file a claim for tax refund or issuance of tax credit with the BIR.* In this view, petitioner is considered to have exhausted administrative remedies.[41] (Emphasis supplied)

The fact of stoppage of operations can be proved by any documentary, object, or testimonial evidence, other than a tax clearance. Here, the CTA *En Banc* found that M2GP proved the dissolution of the partnership through the following evidence: (1) Affidavit of Withdrawal stating that MPEHC withdrew as general partner of M2GP effective January 1, 2010; (2) SEC Certification dated March 29, 2010 certifying that an Affidavit of Withdrawal was executed by one of the two partners of M2GP, thereby technically dissolving the partnership; (3) M2GP's letter request to the BIR for the cancellation of registration and TIN, the issuance of a tax clearance, and the issuance of TCCs for excess input value added tax and CWT stamped received by the BIR on April 12, 2010;[42] and (4) Testimony of Ms. Ivy P. Acosta attesting to, among others, the dissolution of the partnership.[43] The Court accords the CTA *En Banc's* findings of fact with utmost respect, if not finality,[44] absent any showing of grave abuse of discretion considering that the CTA is in the best position to analyze the documents presented by the parties. We do not find any abuse of discretion here.

Considering that M2GP sufficiently established that it has permanently ceased its operations, the CTA *En Banc* correctly held that M2GP should be allowed to file a refund of its excess CWT for CY 2008, as an exception to the irrevocability rule.

M2GP is not required to submit a short period return covering January 1, 2010 to March 29, 2010 as a pre-condition to its refund claim for CYs 2008 and 2009. BPI is inapplicable in this instance

At the onset, we will not disturb the CTA *En Banc's* findings that M2GP established all the requisites for a grant of a refund of excess CWT for *CY 2009*:[45]

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41 *Id.*

42 *Rollo* p. 11.

43 *Id.* at 18.

44 *Commissioner of Internal Revenue v. Traders Royal Bank*, 756 Phil. 175, 191–192 (2015) [Per J. Leonardo-De Castro, First Division]; *Hitachi Global Storage Technologies Philippine Corporation v. Commissioner of Internal Revenue*, 648 Phil. 425, 432–433 (2010) [Per J. Carpio, Second Division].

45 *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. Nos. 242647 & 243814, 242842-43, March 15, 2022 [Notice, First Division], *citing Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 548 Phil. 32, 36–37 (2007) [Per J. Austria-Martinez, Third Division].

> 1) the claim is filed with the CIR within the two-year period from the date of payment of the tax;
>
> 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and,
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> 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom[.][46]

The first and third requisites are undisputed. As regards, however, the second requisite, the issue of whether M2GP proved by *prima facie* evidence that the income on which the CWT was withheld was included as part of its gross income is a question of fact that is outside of this Court's jurisdiction under the Rules of Court, Rule 45. Accordingly, absent grave abuse of discretion, we uphold the CTA *En Banc's* findings.

Nonetheless, the CTA *En Banc* still denied M2GP's refund claim for lack of a short period return. Citing *BPI*, the CTA *En Banc* held that M2GP should have filed a short period return covering the period from January 1, 2010 to March 29, 2010 within 30 days from the SEC's approval of dissolution on March 29, 2010. The CTA *En Banc* held that without the short period return, it cannot determine whether M2GP has a tax payable or a tax overpayment.

This is specious.

The Tax Code, Section 47, provides when a short period return is necessary:

> **Section 47.** ***Final or Adjustment Returns for a Period of Less than Twelve (12) Months.***
>
> ***(A) Returns for Short Period Resulting from Change of Accounting Period.*** — If a taxpayer, other than an individual, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year, a separate final or adjustment return shall be made for the period between the close of the last fiscal year for which return was made and the following December 31. If the change is from calendar year to fiscal year, a separate final or adjustment return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. If the change is from one fiscal year to another fiscal year, a separate final or adjustment return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year.
>
> ***(B) Income Computed on Basis of Short Period.*** — Where a separate final or adjustment return is made under Subsection (A) on *account of a change in the accounting period, and in all other cases where a*

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[46] *Id.*

> *separate final or adjustment return is required* or permitted by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, *to be made for a fractional part of a year*, then the income shall be computed on the basis of the period for which separate final or adjustment return is made. (Emphasis supplied)

A short period return shall be filed when: (a) there is a change in the accounting period of the entity, other than an individual and (b) in other cases where a separate final or adjustment return must be made for a fractional part of a year.

In cases in which a corporation is contemplating dissolution the Tax Code, Section 52(C) requires the entity to file a *correct return* within 30 days after the adoption by the corporation of a resolution or plan for its dissolution:

> **Section 52. *Corporation Returns.***
>
> ***(C) Return of Corporation Contemplating Dissolution or Reorganization.***— Every corporation shall, *within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution,* or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, *render a correct return* to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.
>
> The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission. (Emphasis supplied)

The Court explained in *BPI*,[47] that the *correct return* must be filed by the dissolving corporation.

In that case, Family Bank and Trust Co. (FBTC) operated on a calendar year[48] basis. It was dissolved in the middle of CY 1985, i.e., June 30, 1985, when it merged with the Bank of the Philippine Islands. However, FBTC only filed a Final Adjustment Return on April 15, 1986, or ten months after its cessation of business. Further, FBTC did not file its quarterly income tax in CY 1985. In view of FBTC's shortened term and due to the lack of quarterly returns to be adjusted, the Court ruled that FBTC should file a short period return covering January 1, 1985 to June 30, 1985. Such a return will show whether FBTC still has a tax due or tax overpayment.

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47 416 Phil. 345 (2001) [Per J. Mendoza, Second Division].

48 Calendar year means an accounting period of 12 months ending on the last day of December.

First. Generally speaking, it is the Final Adjustment Return, in which amounts of the gross receipts and deductions have been audited and adjusted, which is reflective of the results of the operations of a business enterprise. It is only when the return, covering the whole year, is filed that the taxpayer will be able to ascertain whether a tax is still due or a refund can be claimed based on the adjusted and audited figures. Hence, this Court has ruled that, at the earliest, the two-year prescriptive period for claiming a refund commences to run on the date of filing of the adjusted final tax return.

In the case at bar, however, the Court of Tax Appeals, applying §78 of the Tax Code, held:

> Before this Court can rule on the issue of prescription, it is noteworthy to point out that based on the financial statements of FBTC and the independent auditor's opinion (Exhs. "A-7" to "A-17"), FBTC operates on a calendar year basis. ***Its [12] months accounting period was shortened at the time it was merged with BPI. Thereby, losing its corporate existence on July 1, 1985 when the Articles of Merger was approved by the [Securities] and Exchange Commission.*** Thus, respondent['s] stand that FBTC operates on a fiscal year basis, based on its income tax return, holds no ground. This Court believes that FBTC is operating on a calendar year period based on the audited financial statements and the opinion thereof. The fiscal period ending June 30, 1985 on the upper left corner of the income tax return can be concluded as an error on the part of FBTC. It should have been for the six month period ending June 30, 1985. It should also be emphasized that "where one corporation succeeds another both are separate entities and the income earned by the predecessor corporation before organization of its successor is not income to the successor" (Mertens, Law of Federal Income Taxation, Vol. 7 S 38.36).

Ruling now on the issue of prescription, [the] court finds that the petition for review is filed out of time. ***FBTC, after the end of its corporate life on June 30, 1985, should have filed its income tax return within [30] days after the cessation of its business or [30] days after the approval of the Articles of Merger.*** This is bolstered by Sec. 78 of the Tax Code and under Sec. 244 of Revenue Regulations No. 2. . .

As the FBTC did not file its quarterly income tax returns for the year 1985, there was no need for it to file a Final [A]djustment Return because there was nothing for it to adjust or to audit. ***After it ceased operations on June 30, 1985, its taxable year was shortened to six months, from January 1, 1985 to June 30, 1985. The situation of FBTC is precisely what was contemplated under §78 of the Tax Code. It thus became necessary for FBTC to file its income tax return within 30 days after approval by the SEC of its plan or resolution of dissolution.*** Indeed, it would be absurd for FBTC to wait until the [15th] day of April, or almost 10 months after it ceased its operations, before filing its income tax return.

Thus, §46(a) of the Tax Code applies only to instances in which the corporation remains subsisting and its business operations are continuing. In instances in which the corporation is contemplating dissolution, §78 of the Tax Code applies. It is a rule of statutory construction that "[w]here

there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."

Petitioner argues that to hold, as the Court of Tax Appeals and the Court of Appeals do, that §78 applies in case a corporation contemplates dissolution would lead to absurd results. It contends that it is not feasible for the certified public accountants to complete their report and audited financial statements, which are required to be submitted together with the plan of dissolution to the SEC, within the period contemplated by §78. It maintains that, in turn, the SEC would not have sufficient time to process the papers considering that §78 also requires the submission of a tax clearance certificate before the SEC can approve the plan of dissolution.

As the Court of Tax Appeals observed, however, petitioner could have asked for an extension of time to file its income tax return under §47 of the NIRC which provides:

> ***Extension of time to file returns.*** — The Commissioner of Internal Revenue may, in meritorious cases, grant a reasonable extension of time for filing returns of income (or final and adjustment returns in the case of corporations), subject to the provisions of section [51] of this Code.

Petitioner further argues that the filing of a Final Adjustment Return would fall due on July 30, 1985, even before the due date for filing the quarterly return. This argument begs the question. ***It assumes that a quarterly return was required when the fact is that, because its taxable year was shortened, the FBTC did not have to file a quarterly return.*** In fact, petitioner presented no evidence that the FBTC ever filed such quarterly return in 1985.

Finally, petitioner cites a hypothetical situation wherein the directors of a corporation would convene on June 30, 2000 to plan the dissolution of the corporation on December 31, 2000, but would submit the plan for dissolution earlier with the SEC, which, in turn, would approve the same on October 1, 2000. Following §78 of the Tax Code, the corporation would be required to submit its complete return on October 31, 2000, although its actual dissolution would take place only on December 31, 2000.

Suffice it to say that such a situation may likewise be remedied by resort to §47 of the Tax Code. ***The corporation can ask for an extension of time to file a complete income tax return until December 31, 2000, when it would cease operations.*** This would obviate any difficulty which may arise out of the discrepancies not covered by §78 of the Tax Code.[49] (Emphasis supplied, citations omitted)

In other words, a corporation contemplating dissolution shall file a *short period return only* in instances when its taxable period was *shortened* because of the dissolution. The Tax Code, Section 47(B) is explicit: a short period

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[49] *Bank of the Philippines Islands v. Commissioner of Internal Revenue*, 416 Phil. 345, 351–354 (2001) [Per J. Mendoza, Second Division].

return is required when a final or adjustment return will be made for a *fractional part of a year*. The short period return is the correct return described in the Tax Code, Section 52(C) as it is reflective of the results of the operations from the beginning of the taxable year until the cessation of business in the middle of the year. To be sure, the correct return is the basis of the BIR in issuing a tax clearance. It would show in the return whether the dissolving entity still has tax due or is entitled to a refund based on the adjusted figures. Revenue Regulations (RR) No. 2-40,[50] Section 244, provides:

> Section 244. *Return of corporation contemplating dissolution or retiring from business.* — All corporations, partnership, joint accounts and associations, *contemplating dissolution* or retiring from business without formal dissolution shall, within 30 days after the approval of such resolution authorizing their dissolution, and within the same period after their retirement from business, *file their income tax returns covering the profit earned or business done by them from the beginning of the year up to the date of such dissolution or retirement* and pay the corresponding income tax due thereon upon demand by the Commissioner of Internal Revenue[.] (Emphasis supplied)

In FBTC's case, the short period return for the period January 1, 1985 to June 30, 1985 would have shown the results of FBTC's business operations for a fractional part of taxable year 1985, i.e., June 30, 1985 until it ceased operations.

M2GP's case is different from FBTC. *M2GP was dissolved at the end of CY 2009,* when MPEHC withdrew as a general partner on January 1, 2010. A short period return becomes unnecessary for CY 2009 because M2GP's taxable period was not shortened. To be sure, the 2009 Annual ITR it filed on April 15, 2009 already reflects the income it earned from the beginning of the year up to the cessation of business. The Annual ITR is, therefore, sufficient compliance with the requirement of the 1997 Tax Code, Section 52(C) on the filing of a correct return.

Therefore, the CTA *En Banc* also erroneously denied M2GP's refund claim for *CY 2008,* just because a short period return from January 1, 2010 to March 29, 2010 was not filed. Unless the accounting period of the dissolving entity was cut short by virtue of dissolution, a short period return becomes unnecessary.

The Court cannot see the reason behind mandating M2GP to file a short period return from January 1, 2010 to March 29, 2010 – the time when M2GP was dissolved when MPEHC withdrew from the partnership until the SEC issued a certification that an Affidavit of Withdrawal was executed by one of the two partners of M2GP. In the first place, the Tax Code, Section 52(C) and RR No. 2-40, Section 244 only require the taxpayer claimant to report results

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[50] Income Tax Regulations (1940).

of business operations from the start of the year up to the date of dissolution. This is more practical and fair considering the timeline of the proceedings in securing approval of the dissolution.

The basis of the short period return from January 1, 2010 to March 29, 2010 was presumably the Court's statement in *BPI* that the two-year period to file claims for refund should be counted "30 days after the approval by the SEC of its plan for dissolution[.]"[51]

At this point, we clarify that such pronouncement in *BPI* is inaccurate; hence, must be abandoned. The Tax Code, Section 52(C) is clear: "Every corporation shall, *within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution,* ... render a correct return to the Commissioner[.]" Besides, it is absurd to require the taxpayer-claimant to file a return within 30 days from *approval* of the dissolution by the SEC when the Tax Code, Sections 52(C) and 235(e) require the taxpayer to be first cleared from tax liabilities before the SEC may issue a certificate of dissolution. The Court reiterated this in *Axia*:[52]

> Before the Corporation Code took effect in 1980, the law had taken steps to protect government revenue by ensuring that taxes are collected from companies planning to dissolve. This is by way of the tax clearance requirement. *Retiring corporations were obliged to report the incomes they earned for the purpose of determining the amount of imposable tax. Once a corporation has completely paid of its tax liabilities, the BIR will issue a Certificate of Tax Clearance which confirms that the corporation no longer has any outstanding tax obligations to the government. The tax clearance is then submitted to the SEC as a requirement before the latter may issue a Certificate of Dissolution. The law clearly provides that corporations shall not be dissolved until cleared of any tax liability.*
>
> The foregoing requisites, which were formerly embodied in Secs. 45 (C) and 235 (e) of the National Internal Revenue Code of 1977, are now carried over to the present 1997 NIRC, through [Sections 52(C) and 235(e)].
>
> . . . .
>
> Here, the SEC approved the merger on March 29, 2010 without the requisite tax clearance submitted by MESC. In fact, the latter applied for a tax clearance only on April 15, 2010, and was granted one on January 11, 2015. Nonetheless, [w]e are not being asked in this Petition to look into and rule upon the apparent *premature issuance by the SEC of the Articles of Merger without the requisite tax clearance from the BIR.*[53] (Emphasis supplied, citations omitted)

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[51] *Bank of the Philippine Islands v. Commission of Internal Revenue*, 416 Phil. 345, 354–355 (2001) [Per J. Mendoza, Second Division].

[52] G.R. No. 230847, October 14, 2020 [Notice, Third Division].

[53] *Id.*

The basis of the tax clearance would be the *correct return* filed by the dissolving entity without which, the SEC should not approve the dissolution. Surely, a tax return *after* the approval of the dissolution becomes irrelevant.

Correspondingly, for entities contemplating dissolution, the 2-year prescriptive period to claim for refund commences to run *after the 30-day period to file the required correct return.* This should be considered the date when the results of operations of the dissolving entity is finally determined and the taxpayer would know whether a tax is still due or a refund can be claimed.

In M2GP's case, it filed an administrative claim for refund or issuance of a TCC for its excess CWT for CY 2008 on April 12, 2010, and the judicial claim on March 31, 2011 – all within the two-year prescriptive period required under the Tax Code, Section 229,[54] since M2GP filed its Annual ITR on April 15, 2009.

For CY 2009, the prescriptive period should be counted from *January 31, 2010,* or 30 days after MPEHC's withdrawal from the partnership. Thus, M2GP has until January 31, 2012 to institute administrative and judicial claims. Here, M2GP filed its administrative and judicial claims for refund on April 12, 2010 and March 31, 2011, respectively. Accordingly, the refund claim was timely filed.

The proper course of action is to remand the case to the tax court

For *CY 2008*, both the CTA Division and the CTA *En Banc* did not make a factual determination as to whether M2GP complied with the requisites of a CWT refund for CY 2008. The CTA Division ruled that M2GP's case does not fall within the exception to the irrevocability rule, while the CTA *En Banc* denied M2GP's claim solely based on lack of short period return.

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[54] **Section 229. *Recovery of Tax Erroneously or Illegally Collected.*** – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
In any case, no such suit or proceeding shall be filed unless there is a full or partial denial of the claim for refund or credit by the Commissioner or there is a failure on the part of the Commissioner to act on the claim within the one hundred eighty (180) day period under Section 204 of this Code; Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.
In case of full or partial denial of the claim for tax refund, 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 eighty (180) day period, appeal the decision with the Court of Tax Appeals.

On the other hand, for *CY 2009*, the CTA Division held that M2GP did not comply with the requisites for claiming a refund of excess CWT. This was reversed by the CTA *En Banc*, declaring that M2GP proved that the income on which the CWT was withheld was included as part of its gross income. Still, the CTA *En Banc* denied M2GP's claim for its failure to present a short period return.

The refundable amount of excess CWT should be done at the level of the CTA Division. We cannot make such determination in this Petition. The Court is not a trier of facts. We are only confined to the issues raised by the parties that are qualified as questions of law. "A question of law exists when there is doubt or controversy as to what the law is on a certain set of facts. In contrast, what is involved is a question of fact when the resolution of the same demands the calibration of evidence, the determination of the credibility of witnesses, the existence and the relevance of the attendant circumstances, and the probability of specific situations."[55] While the issues raised in this Petition are questions of law, the computation of the correct amount to be refunded requires a review of the evidence submitted by M2GP to substantiate its claim. Thus, there is a need to remand the case to the CTA Division to determine the following:

(a) for CY 2008, whether M2GP proved that: the income payment subjected to withholding tax was declared part of its gross income in its return, the fact of withholding was established and the proper amount to be refunded is the same as the amount being claimed.

(b) for CY 2009, the refund claim and the proper amount to be refunded.

ACCORDINGLY, the Petition is **GRANTED**. The Court of Tax Appeals *En Banc* Decision dated April 20, 2016 and the Resolution dated October 24, 2016 in CTA *EB* No. 1206 are **REVERSED**. The case is **REMANDED** to the Court of Tax Appeals Division to determine the refundable amount of the excess and the unutilized creditable withholding taxes for the calendar years 2008 and 2009. The Court of Tax Appeals Division is **DIRECTED** to conduct the proceedings with reasonable dispatch.

SO ORDERED.

MARIO V. LOPEZ
Associate Justice

[55] *People v. Reyes*, G.R. No. 252861, February 15, 2022 [Per C.J. Gesmundo, *En Banc*].

WE CONCUR:

On Official Business
MARVIC M.V.F. LEONEN
Senior Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice
Acting Chairperson

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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.

AMY C. LAZARO-JAVIER
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ALFREDO BENJAMIN S. CAGUIOA
Acting Chief Justice
Designated Acting Chief Justice per Special Order No. 3045 dated November 3, 2023