REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ONG BENG GUI (operating under the name and style "MUCH PROSPERITY TRADING"),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8410

Members:
CASTAÑEDA,JR., Chairperson
CASANOVA,
COTANGCO-MANALASTAS, JJ.

Promulgated:

SEP 08 2014
4:30 p.m.

X- X

DECISION

Casanova, J.:

This is a Petition for Review[1], filed by petitioner-Ong Beng Gui, seeking the refund of the amount of ₱320,099.79, allegedly representing erroneous payment of withholding tax on compensation (WTC) on separation pay erroneously remitted to the Bureau of Internal Revenue on January 12, 2010, through the Electronic Filing and Payment System ("EFPS").

Petitioner is a Filipino, married, of legal age and is residing at 565 Muelle de Binondo, Manila. He is operating a wholesale and general merchandise business under the name and style "MUCH PROSPERITY TRADING", which has applied for and in the process of cessation/retirement.[2]

Respondent is the Commissioner of Internal Revenue, with address at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Quezon City, and is vested by law with the

[1] Docket, pp. 6-12
[2] Par. 1.1, The Parties, Petition for Review, Docket, p. 6

power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code ("Tax Code").[3]

The facts of the case, as culled from the records, are as follows:

On December 14, 2009, after resolving to retire his business, petitioner applied with the Department of Labor and Employment ("DOLE") for authority to terminate thirty-seven (37) employees effective January 16, 2010.

Petitioner paid ₱1,167,191.00, as separation pay, to the 37 terminated employees in December 2009.

On January 12, 2010, petitioner filed through Electronic Filing and Payment System ("EFPS") his monthly Withholding Tax on Compensation ("WTC") Form (BIR Form 1601-C") for the month of December 2009 and paid the corresponding WTC in the amount of ₱320,099.79 on the separation pay he paid to the 37 terminated employees. Realizing that the amount of ₱1,167,191.00 separation pay he paid to his 37 terminated employees should not have been subjected to WTC pursuant to Sec. 32 (B)(6)(b) of the Tax Code and Sec. 2.79 (B) of Revenue Regulations No. 2-98, as amended, petitioner filed and paid through EFPS on January 19, 2010, an amended BIR Form 1601-C for the month of December 2009, reflecting the correct WTC of ₱16,104.82, properly exempting the separation pay of ₱1,167,191.00 from WTC.

On February 22, 2010, petitioner filed through EFPS the Annual Information of Income Taxes Withheld on Compensation and Final Withholding Taxes ("BIR Form 1604-CF") reflecting petitioner's WTC payment of ₱16,104.82 for the month of December 2009 and excluding the earlier WTC payment of ₱320,099.79 made in January 12, 2010.

On February 2, 2010, petitioner filed an administrative claim for refund with the Revenue Accounting Division and Revenue District Office No. 29 (San Nicholas/Tondo) of the BIR through Metropolitan Bank and Trust Company ("MBTC"), the Authorized Agent Bank which handled petitioner's aforementioned EFPS payment.

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[3] Par. 1.2, Joint Stipulation of Facts, Joints Stipulation of Facts and Issues ("JSFI"), Id., pp. 68-69

Due to respondent's inaction on petitioner's claim for refund and, to toll the running of the 2-year prescriptive period, the instant Petition for Review was filed with this Court on January 11, 2012.

On March 6, 2012, respondent filed her Answer[4] raising the following Special and Affirmative Defenses:

"LACK OF CAUSE OF ACTION

5. Sec. 32, B, (6) b of Republic Act 8424 or the Tax Reform Act of 1997 clearly provides that:

> 'SECTION 32. Gross Income. –
> 'x x x
>
> (B) Exclusions from Gross Income. – The following items shall not be included in gross income and shall be exempt from taxation under this Title:
> x x x
>
> (6) Retirement Benefits, Pensions, Gratuities, etc. –
>
> (b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee.

6. In the case of Philippine Long Distance telephone (sic) Company vs. Commissioner of Internal Revenue, CA-G.R. SP NO. 61624 promulgated on 11 February 2002 by the Court of Appeals held that:

> 'Prescinding from the above law and rulings, in order to qualify for an exemption from income taxes, the official or employee must be actually separated from the service for any

[4] Docket, pp. 35-39

> of the causes aforementioned and the official or employee receives separation pay or benefits from the employer as a consequence of such separation. It follows therefore, that in order to be entitled to a claim for refund of overpaid or erroneously paid withholding taxes on separation pay, petitioner must prove that:
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> (1) its employees were actually separated from employment due to causes beyond their control;
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> (2) its employees actually received separation pay and other benefits as a consequence of such involuntary separation;
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> (3) it actually withheld income taxes on the employees' separation pay/other benefits; and
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> (4) it actually remitted to the BIR the withholding taxes on the employees' separation pay/other benefits.

7. Petitioner's bare allegations on full compliance with the requirements of law for entitlement to claim a tax refund for payment on tax-exempt separation pay of the alleged terminated employees is self-serving at its best.

8. Assuming without admitting that Petitioner indeed filed for retirement from business, the self-serving allegation by Petitioner that the affected employees were properly paid their separation pay in accordance with law in the month of December 2009 is fatal to the Petition.

9. There is no actual proof of the alleged payment of separation pay and the amount of separation pay paid by Petitioner to the dismissed employees.

10. Even the identities of the alleged affected employees to whom the separation pays were paid are not

established by the Petitioner or that the affected employees actually received the separation pay from Petitioner.

11. Clearly therefore, the failure of Petitioner to establish actual payment of separation pay to his affected employees casts doubt on whether the Petitioner withheld the correct amount of income tax and that the correct amount was remitted.

12. Tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority, and the *taxpayer bears the burden of establishing the factual basis of his claim for a refund* as held by the Supreme Court in the case of Far East Bank and Trust Company v. Court of Appeals, G.R. No. 129130, December 9, 2005, 477 SCRA 49, pp. 57-58.

13. The Supreme Court, in the case of PLDT abovementioned, when elevated before it, docketed as Philippine Long Distance telephone (sic) Company vs. Commissioner of Internal Revenue, G.R. No. 157264, promulgated on January 31, 2008, held that:

> 'Under the earlier quoted portion of Section 28 (b)(7)(B) of the National Internal Revenue Code of 1977 (now Section 32 (B) 6 (b) of the National Internal Revenue Code of 1997), it is incumbent on PLDT as a claimant for refund on behalf of each of the separated employees to show that each employee did
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>> x x x reflect in his or its own return the income upon which any creditable tax is required to be withheld at the source. Only when there is an excess of the amount of tax so withheld over the tax due on the payee's return can a refund become possible.
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>> A taxpayer must thus do two things to be able to successfully make a claim for the tax refund: (a) declare the income payments it received as part of its gross income and (b) establish the fact of

> withholding. On this score, the relevant revenue regulation provides as follows:
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> > 'Section 10. *Claims for tax credit or refund.* – Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payer to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom.'
>
> In fine, PLDT must prove that the employees received the income payments as part of gross income and the fact of withholding.

14. Thus, absent proof that Petitioner paid separation pay and the employees actually received the separation pay, Petitioner is not entitled to claim for tax refund.

15. Contrary to Petitioner's claim, the tax was not erroneously collected as Petitioner was duty bound to do so under the law and he is not entitled to the tax refund claimed.

16. It is clear from the foregoing that Petitioner is not entitled to the tax refund claimed for lack of cause of action."

A Notice of Pre-Trial Conference[5] was issued by this Court on March 7, 2012 setting the case for pre-trial conference on April 12, 2012, and requiring the parties to file their respective pre-trial briefs. Respondent filed her Pre-trial Brief[6], through registered mail on April 4, 2012, while petitioner filed his Pre-Trial Brief[7] on April 10, 2012.

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[5] Docket, p. 40
[6] Ibid, pp. 41-42
[7] Id., pp. 43-49

Thereafter, the parties filed their Joint Stipulation of Facts and Issues ("JSFI")[8] on May 10, 2012 which was subsequently approved by the Court in a Resolution[9] dated May 17, 2012.

After presentation of his evidence, petitioner filed his Formal Offer of Evidence (For Petitioner)[10]. Respondent filed her Comment (To Formal Offer of Evidence For Petitioner)[11] on October 12, 2012.

This Court, per Resolution[12] dated November 9, 2012, resolved to admit Exhibits "C" to "F-31" and "G-1" to "N", inclusive of their sub-markings. Admission of Exhibit "G", however, was denied for the petitioner's failure to submit the duly marked exhibit. The Court, likewise, noted that Exhibit "K" described as "Ong Beng Gui's Letter to Metrobank dated 20 January 2012" is actually dated January 20, 2012.

On November 21, 2012, petitioner filed an Omnibus Motion (for the Partial Reconsideration of Resolution dated 9 November 2012 and the Admission of Documentary Evidence)[13] praying that this Court:

1. Reconsider its Resolution dated 9 November 2012 insofar as the issues raised herein are concerned;

2. Admit documentary Exhibit "G" in view of the submission of the duly marked copy of said Exhibit with this Honorable Court.

In compliance with this Court's Resolution[14] dated November 23, 2012, respondent filed her Comment (To Petitioner's Motion for Reconsideration)[15] on December 10, 2012.

Finding merit in petitioner's Omnibus Motion (for the Partial Reconsideration of Resolution dated 9 November 2012 and the Admission of Documentary Evidence), the Court, per Resolution[16] dated December 27, 2012, admitted Exhibit "G". ea

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[8] Id., pp. 68-71
[9] Id., p.78
[10] Id., pp. 95-97
[11] Id., pp. 156-157
[12] Id., pp. 158-159
[13] Id., pp. 164-167
[14] Id., p. 170
[15] Id., pp. 171-172
[16] Id., pp. 175-176

Respondent, thereafter, presented her evidence and, subsequently, filed her Formal Offer of Documentary Evidence (For The Respondent)[17] on February 22, 2013, without any Comment from petitioner.

On May 10, 2013, the Court promulgated a Resolution[18] denying respondent's Exhibits "1" to "15-1" for following grounds:

1. Exhibits "1" to "14", for failure of petitioner to have the said documents identified during trial; and

2. Exhibits "15" and "15-1", for failure of the said document to contain a "[a] statement that the witness is answering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury" as required under Section 3(c) of the Judicial Affidavit Rule (A.M. No. 12-8-8-SC), and in relation to Section 10 (c) thereof.

On May 31, 2013, respondent filed a Motion for Reconsideration (To The Resolution dated 10 May 2013)[19] praying that the Court reconsider the Resolution dated May 10, 2013 and resolve to admit the documentary evidence for the respondent for the purposes for which they were offered. Petitioner filed his Comment/Opposition (to Motion for Reconsideration dated 24 May 2013)[20] on July 9, 2013.

On August 1, 2013, the Court, per Resolution[21] denied respondent's Motion for Reconsideration for lack of merit. In the same Resolution the parties were given thirty (30) days from receipt of the Resolution to file their respective Memorandum.

On August 13, 2013, respondent filed Offer of Proof[22] which was subsequently noted by the Court per Order[23] dated August 16, 2013.

On September 5, 2013, respondent filed her Memorandum[24] while petitioner filed his Memorandum[25] on September 11, 2013.

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[17] Id., pp. 200-203
[18] Id., pp. 226-227
[19] Id., pp. 228-231
[20] Id., pp. 234-236
[21] Id., pp. 239-241
[22] Id., pp. 242-243
[23] Id., p. 244
[24] Id., pp. 245-254
[25] Id., pp. 255-263

Consequently, this Court, in the September 13, 2013 Resolution[26] considered the case submitted for decision.

As stated in the parties' Joint Stipulation of Facts and Issues ("JSFI"), the following are the issues[27] submitted for this Court's resolution, viz:

> "2.1 Whether or not the Honorable Court has jurisdiction to entertain the instant Petition for Review.
>
> 2.2 Whether or not Petitioner terminated 37 employees, and in the process, paid Separation Pay of Php1,167,191.00 to 31 employees in full and without any withholding.
>
> 2.3 Whether or not Petitioner as the statutory withholding agent for WTC is entitled to claim the refund on paid WTC on Separation Pay to his employees advanced by Petitioner.
>
> 2.4 Whether or not the evidence supports Petitioner's claim that the Separation Pay remitted to Petitioner's employees was undiminished by WTC.
>
> 2.5 Whether the evidence supports Petitioner's claim that he advanced WTC in the amount of Php320,099.79 paid to the BIR representing WTC on tax-exempt Separation pay."

As regards the first issue, Section 204(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 204. – **Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.** – The Commissioner may –
>
> xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund

[26] Id., p. 264
[27] Joint Stipulation of Issues, JSFI, Docket, p. 70

> the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." (*Emphasis supplied.*)

In relation thereto, Section 229 of the NIRC of 1997, as amended, states:

> "Sec. 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, or of any sum alleged to have been exclusively 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 final after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: *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." (*Emphasis supplied.*)

Section 204 (C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. However, both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the **date of payment of the tax.**

Petitioner filed his original Monthly Remittance Return of Income Taxes Withheld on Compensation [BIR Form No. 1601-C] for the month of December 2009 and paid, on January 12, 2010, the corresponding WTC of ₱320,099.79 on the separation pay subject of the instant claim.[28] Counting from this date, petitioner had until January 12, 2012 within which to file his administrative and judicial claims for refund. Clearly, petitioner's administrative claim[29] for refund, filed through his Authorized Agent Bank, Metropolitan Bank & Trust Company, on February 2, 2010 and the subsequent appeal before this Court via a Petition for Review on January 11, 2012, both fell within the reglementary period.

On the issue of whether or not petitioner, as the statutory withholding agent for WTC, is entitled to claim the refund of WTC on separation pay to his employees which was paid in advance by petitioner, the answer is in the affirmative.

In the case of **Commissioner of Internal Revenue v. SMART Communication, Inc.,**[30] the Supreme Court explained why the withholding agent may file a refund claim as follows:

> "Although such relation between the taxpayer and the withholding agent is a factor that increases the latter's legal interest to file a claim for refund, there is nothing in the decision to suggest that such relationship is required or that the lack of such relation deprives the withholding agent of the right to file a claim for refund. Rather, what is clear in the decision is that **a withholding agent has a legal right to file a claim for refund for two reasons. First, he is considered a "taxpayer" under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. Second, as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.**
>
> In this connection, it is however significant to add that while the withholding agent has the right to recover the taxes erroneously or illegally collected, he

[28] Par. 1.3, Joint Stipulation of Facts, JSFI, Docket, p. 69; Exhibit "G-1"
[29] Par. 1.6, Ibid; Exhibits "J", "J-1" and "K"
[30] G.R. Nos. 179045-46, August 25, 2010

nevertheless has the obligation to remit the same to the principal taxpayer. **As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund.**" (*Emphasis supplied.*)

We now proceed to the remaining issues which boil down to whether petitioner is entitled to the claim for refund of withholding tax on compensation in the amount of ₱320,099.79 for the taxable month of December 2009.

Petitioner anchors his claim on Section 32(B)(6)(b) of the NIRC of 1997, as amended, which provides as follows:

"**Section 32.** Gross Income. –

xxx

(B) *Exclusions from Gross Income.* – The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx

(6) *Retirement Benefits, Pensions, Gratuities, etc.* –

xxx

(b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee."

Section 2.78.1(B)(1)(b) of the Revenue Regulations No. 02-98 also provides for the exemptions from withholding tax on compensation for remunerations received as an incident of employment, to wit:

"Any amount received by an official or employee or by his heirs from the employer due to death, sickness or other physical disability or for any cause beyond the control

> of the said official or employee, such as retrenchment, redundancy, or cessation of business."

Considering the afore-quoted provisions, any amount paid by an employer to his employees as separation pay, wherein the separation resulted from the latter's involuntary termination from service (*i.e.* cessation of business), is exempt from income tax and consequently from withholding tax.

Records show that on December 14, 2009, petitioner resolved to retire his business and applied to terminate thirty seven (37) employees with the Department of Labor and Employment (DOLE) effective January 16, 2010 as evidenced by his Cancellation of TIN for Permanent Closure of a Branch[31] filed with the BIR on January 5, 2010 as well as the Establishment Employment Report[32] and List of Affected Workers By Displacements/Flexible Work Arrangements[33] filed with the DOLE on December 14, 2009.

Consequently, petitioner paid separation pay, in full, to 31 of his employees in the total amount of ₱1,167,191.00 as indicated in the notarized statements of waiver and quitclaim entitled "PAGPAPALAYA SA LAHAT NG OBLIGASYON"[34] duly executed and signed by the said employees in the presence of two (2) DOLE Labor Employment Officers.

However, petitioner avers that, while the separation pay was disbursed in full, his accountant erroneously withheld withholding taxes on compensation on separation pay, which he paid in behalf of his employees.[35]

As stated earlier, petitioner filed his BIR Form 1601-C[36] for the month of December 2009 on January 12, 2010 and paid the corresponding WTC in the amount of ₱320,099.79.[37] In the attached Computation of Withholding Taxes for 2009[38], the separation pay to each of petitioner's 31 employees totaling ₱1,167,191.00 was labeled as "Taxable" and was included in the "Net Taxable Income after exemption". Consequently, the total income taxes due on the employees' compensation for the year 2009 amounted to

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[31] Exhibit "C"
[32] Exhibit "D"
[33] Exhibit "E"
[34] Exhibits "F" to "F-31"
[35] Exhibit "L"
[36] Exhibit "G"
[37] Exhibit "G-1"
[38] Exhibits "G-2" and "G-3"

₱465,739.57 against which the total taxes withheld for January to November 2009 in the amount of ₱145,639.78 was deducted resulting to net taxes due for December 2009 in the amount of ₱320,099.79.

Realizing that the separation pay is exempt from withholding tax, petitioner filed his Amended BIR Form No. 1601-C[39] for the month of December 2009 and paid WTC in the amount of ₱16,104.82[40] without deducting his previously remitted tax. Correspondingly, in his Amended Computation of Withholding Taxes for 2009[41], the separation pay of ₱1,167,191.00 was labeled as "Non-Taxable" and was excluded in the "Net Taxable Income after exemption". Thus, total income taxes due on the employees' compensation for the year 2009 amounted only to ₱161,744.60 from which the total taxes withheld for January to November 2009 in the amount of ₱145,639.78 was deducted resulting to net taxes due for December 2009 in the amount of only ₱16,104.82.

However, the amount ₱161,744.60 taxes withheld and remitted for the year 2009 per the amended Computation of Withholding Taxes for 2009 does not tally with that reflected in petitioner's Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes [BIR Form No. 1604-CF][42]. While petitioner reported in his BIR Form No. 1604-CF the amount of ₱181,906.05 as total taxes withheld and remitted for the year 2009, which is of higher amount, the same cannot be considered to include the amount due of ₱161,744.60 since petitioner did not provide the Monthly Remittance Returns of Income Taxes Withheld on Compensation for January to November 2009 to ascertain the amounts withheld and remitted for the said months.

As such, petitioner may be entitled to a refund only to the extent of what was paid per his BIR Forms No. 1601-C (original and amended) for December 2009 in excess of what was due, as computed below:

WTC remitted per original BIR Form No. 1601-C	₱ 320,099.79
WTC remitted per amended BIR Form No. 1601-C	16,104.82
Total WTC remitted to the BIR	₱ 336,204.61
Less: Total WTC due and payable	161,744.60
Overremittance to the BIR	₱ 174,460.01

[39] Exhibit "H"
[40] Exhibit "H-1"
[41] Exhibits "H-2" and "H-3"
[42] Exhibit "I"

Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[43] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[44]

WHEREFORE, premises considered, the Petition for Review is **GRANTED but in the reduced amount of ₱174,460.01** representing excess payment of WTC for the taxable month of December 2009.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[43] Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue, G.R. No. 154028, July 29, 2005
[44] National Power Corporation vs. Province of Isabela, G.R. No. 165827, June 16, 2006 citing Cyanamid Philippines, Inc. vs. Court of Appeals, 379 Phil. 689, 703 (2000)

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice