Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

SC & C COSMETECH CO., INC. ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C T A E.B. NO. 126
(C.T.A. Case No. 6650)

Present:

Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:

JUL 3 1 2006

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DECISION

UY, *J.* :

Petitioner elevates its case to the Court *En Banc* by filing on November 9, 2005, a Petition for Review pursuant to Section 1, Rule 43 of the Revised Rules of Court seeking the reversal of the Decision dated June 6, 2005 and the Resolution dated September 21, 2005 rendered by the First Division of this Court in CTA Case No. 6650, entitled "SC & C Cosmetech Co., Inc. v. Commissioner of Internal Revenue" denying petitioner's claim for refund and/or issuance of a tax credit certificate on its alleged unutilized creditable withholding taxes for the year 2000 in the total amount of THREE MILLION ONE HUNDRED FIVE THOUSAND SEVEN HUNDRED TWENTY THREE PESOS (P3,105,723.00).

Culled from the assailed Decision, the established facts of the case are as follows:

Petitioner is a domestic corporation primarily engaged in the business of manufacturing cosmetics and pharmaceutical products exclusively for Johnson & Johnson (Phils.), Inc.

For the year 2000, Johnson & Johnson (Phils.), Inc. withheld quarterly the taxes due on its income payments to petitioner in the aggregate amount of ₱3,767,088.81 and issued the corresponding Certificates of Creditable Tax Withheld at Source. The taxes withheld are summed up in the following manner:

First Quarter:	Income Payment	Tax Withheld For the Quarter
January	265,467.00	
February	1,717,015.00	
March	7,409,153.00	923,916.35
Second Quarter		
April	2,400,870.00	
May	2,953,678.00	
June	3,650,377.00	790,049.25
Third Quarter		
July	1,411,430.00	
August	5,498,082.00	
September	6,925,774.00	1,138,352.86
Fourth Quarter		
October	7,742,717.00	
November	247,668.00	
December	3,486,650.00	914,770.35
Total Amount	43,708,881.00	3,767,088.81

However, petitioner did not mark any of the boxes found in Line 31 of the said return to signify its choice whether to be refunded, to be issued a tax credit certificate or to be carried over as tax credit next year/quarter in case of tax overpayment.

On January 22, 2003, petitioner through its counsel, filed a claim for refund or issuance of a tax credit certificate with the Bureau of Internal Revenue, Revenue Region No. 8, Revenue District No. 52 of Parañaque City in the amount of Php3,105,723.00 representing its unutilized creditable withholding tax for the year 2000. Petitioner maintains that in the year 2000: (1) despite having incurred a net loss in the amount of P2,202,010.00, it has a minimum corporate income tax ("MCIT") in the amount of P661,366.00 as imposed by law; (2) it has an unutilized creditable withholding tax or excess prepaid tax in the amount of P3,767,089.00; and (3) if the MCIT in the amount of P661,366.00 is to be deducted from its unutilized creditable withholding tax in the amount of P3,767,089.00, an excess prepaid tax in the amount of P3,105,723.00 would be due in its favor.

Without waiting for the respondent to decide on its protest and in order to preserve its claim for refund as provided in Section 229 of the National Internal Revenue Code of 1997 ("Tax Code"), as amended, petitioner filed a Petition for Review docketed as CTA Case No. 6650 before this Court on April 10, 2003 claiming that it is entitled to a refund and/or issuance of a tax credit certificate on its alleged unutilized creditable withholding taxes for the year 2000 in the total amount of P3,105,723.00.

The First Division of this Court rendered its assailed Decision denying petitioner's claim for refund or issuance of tax credit certificate on the ground that based on the provisions of Section 76 of the Tax Code, when petitioner opted to carry over its excess 2000 tax credits to the taxable quarters of the succeeding taxable years, such option became irrevocable and petitioner is mandated to carry-over the same to the taxable quarters of the succeeding taxable years until the same is fully utilized or applied against petitioner's succeeding tax liabilities. Petitioner's motion for reconsideration of said decision was likewise denied in the Resolution promulgated on September 21, 2005 constraining petitioner to file the instant petition for review before the Court En Banc.

Petitioner contends that in the case of Tiffany Tower Realty Corporation vs. Commissioner of Internal Revenue in CTA Case No. 5495 promulgated on January 6, 2000, it was held that the requirements for a taxpayer to be entitled to a refund of excess creditable taxes withheld at source are as follows:

> "1) That it was shown on the return of the recipient that the income payment received was declared as part of the gross income or, stated otherwise, were included in the return of the recipient (Section 10, Revenue Regulations No. 6-85, ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957);

2) That the fact of withholding is established by a copy of statement [BIR Form No. 1743.1 (now BIR Form No. 2307)] duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3) That the claim for refund was filed within the two (2) year period prescribed under Section 229 (then Section 230) of the National Internal Revenue Code *(Petition for Review, p. 7, Records, p. 37)*."

Petitioner submits that based on its uncontroverted testimonial and documentary evidence, it was able to comply with the foregoing requirements and the only remaining issue to be resolved is the proper interpretation of the last paragraph of Section 76 of the Tax Code, as amended, which provides that "[i]n case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, 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 tax against income due for the taxable quarters of the succeeding taxable years has been made, <u>such option shall be considered irrevocable for that taxable period</u> and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor**" *(Emphasis and underscoring supplied)*.

Invoking the decision of the Court of Appeals in Commissioner of Internal Revenue vs. Citicorp Capital Phils., Inc. (CA-G.R. SP No. 68554, 12 April 2002), petitioner asserts that the issue on the interpretation of the provisions of Section 76 has been settled, with the said appellate court ruling that the option is irrevocable only for the next taxable period where the excess tax payment was carried over. Furthermore, petitioner also cites the earlier Court of Appeals decision in Commissioner of Internal Revenue vs. Hopewell Tileman Power Systems, Inc. (CA-G.R. SP No. 60898, 12 March 2002) wherein it was ruled that once the taxpayer opts to carry over and apply the excess tax to the next year's tax liability , it cannot have the said excess refunded in the meantime during the length of the next taxable year, and that there is nothing in the provisions of the law to prohibit the refund of the carried over excess tax following the lapse of the taxable period to which it was carried over.

Respondent Commissioner of Internal Revenue in his Comment filed on March 1, 2006, alleged that petitioner's reliance on the rulings of the Court of Appeals in the cases of Commissioner of Internal Revenue vs. Citicorp Capital Phils., Inc. and Commissioner of Internal Revenue vs. Hopewell Tileman Power System, Inc., and such other similar rulings is misplaced for being inapplicable and bereft of factual and legal basis; the assailed Decision and Resolution of the Court's First Division clearly anchors on the applicability of Section 76 of the Tax Code, as amended, which has been explained by Hon. Justice Jose C. Vitug and Hon. Justice Ernesto D. Acosta, co-authors of the book entitled Tax Law and Jurisprudence, Second Edition, stating that "if the total quarterly payments during the taxable year is over the total tax due, the excess may be carried over and credited against the taxpayer's income tax liabilities for the succeeding taxable years. Once the option to carry over was chosen, the same shall be considered irrevocable; hence, no claim for refund is allowed *(pp. 184-185)*". In the case at bench, the documentary evidence presented by petitioner, such as its Annual Income Tax Returns for the years 2001, 2002 and 2003, clearly show that petitioner exercised its option to carry-over its claimed 2000 unutilized creditable withholding taxes to the next succeeding years of 2001, 2002 and 2003, pursuant to Section 76 of the Tax Code, as amended.

The lone issue raised in this petition is whether or not petitioner is entitled to a cash refund and/or an issuance of a tax credit certificate in the amount of P3,105,723.00 representing its excess creditable income tax for taxable year 2000.

The Court *En Banc* rules in the negative.

Section 76 of the Tax Code, as amended, reads:

> **SEC. 76. Final Adjustment Return.** – 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:
>
> (A) Pay the balance of tax still due; or
> (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, 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 tax against income 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 *(Underscoring Ours)*.

As clearly seen from this provision, the taxpayer is allowed three (3) options if the sum of its quarterly tax payments made during the taxable year is not equal to the total tax due for that year, to wit: (a) to pay the balance of the tax still due; (b) to carry-over the excess credit; or (c) to be credited or refunded the amount paid. If the taxpayer has paid excess quarterly income taxes, it may be entitled to a tax credit or refund as shown in its final adjustment return which may be carried over and applied against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. However, **once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed** *(Paseo Realty and Development Corporation vs. Court of Appeals, 440 SCRA 235, at 250 [2004]; Emphasis supplied).*

With respect to the options taken by petitioner, the First Division aptly made the following undisputed findings:

> "In its 2000 Annual Income Tax Return filed on April 10, 2001 *(Exhibit A),* petitioner did not mark any box found in Line 31 therein to signify its option. Legibly printed on the first page of the income tax return (BIR Form 1702) are the required data that petitioner must fill in all applicable spaces. Likewise, in Line 31 thereof, petitioner was instructed to mark the appropriate box of its choice whether to be refunded, to be issued a tax credit certificate or to be carried over as tax credit next year/quarter in case of overpayment.
>
> The Court takes notice that the standard BIR Form 1702 (July 1999 format which petitioner used in its 2000 Annual Income Tax Return) has page four (4) which provided the taxpayers guidelines and instructions to observe and follow and which petitioner did not include in all the income tax returns it presented to the Court as evidence. Pertinent portion thereof reads:
>
> > **'Tax Refund/Credit**
> >
> > "An excess of the total tax credits/payments over the actual income tax due computed in the final adjusted return may be refunded or issued with the Tax Credit Certificate to the taxpayer or credited against his estimated income tax liabilities for the quarters of the succeeding taxable years. The taxpayer shall exercise his option by marking with an 'x' the appropriate box, which option shall be considered irrevocable for that taxable period. Thus, once the taxpayer opted to carry-over and apply the excess income tax against income tax due for the succeeding taxable year, no application for cash refund or issuance of a tax credit certificate shall be allowed. **In case the taxpayer fails to signify his choice, the excess payment shall be automatically carried-over to the next taxable period."** '

Since petitioner did not signify its choice by marking with an 'X' the box corresponding to the option to be refunded or issued a tax credit certificate, petitioner is deemed to have elected the option to carry-over. However, petitioner amended its 2000 income tax return almost two years later or on March 27, 2003 *(Exhibit B)* to indicate its choice to be issued a tax credit certificate. But in the meantime, on April 15, 2002, petitioner already filed its income tax return for the year 2001 *(Exhibit E)* and marking therein two (2) options. It chose to be refunded for its 1999 excess tax credits amounting to P2,225,683.00 while it opted to carry over as next year/quarter's tax credit the 2000 excess tax credits of P3,767,089.00. Yet, petitioner applied its tax due for the period in the amount of P426,891.00 against its total tax credits/payments for the same year of P11,275,453.00 thereby declaring an excess tax credit for the year 2001 in the sum of P10,848,562.00.

However, on April 15, 2003 when petitioner filed its income tax return for the year 2002, it again carried over the 1999 excess tax credits, which in the 2001 tax return it already opted to be refunded. It likewise carried over the 2000 excess tax credits. But this time, petitioner indicated that it be issued a tax credit certificate for these 1999 and 2000 excess tax credits. As for its excess tax credits for the year 2001 amounting to P4,855,790.00 petitioner chose the option 'to be carried over as tax credit next year/quarter'. Again, petitioner applied its 2002 tax due of P641,372.00 against its total tax credits/payments for the same year of P18,303,461.00, thus, leaving a total tax credit for the year 2002 in the amount of P17,662,089.00 *(Exhibit G).*

Based on the foregoing facts, petitioner reflected the amount of P2,887,050.00 as its 1999 excess tax credits, which it carried over to the year 2000 *(Exhibit A).* But in the year 2001, it changed its option to be refunded of its 1999 excess tax credits but not in the amount of P2,887,050.00 but only of P2,225,683.00 (*Exhibit E*). Came 2002, petitioner still carried over the 1999 excess tax credits of P2,225,683.00 *(Exhibit G).* The 1999 total excess tax credits even formed part of the total tax credits/overpayment being applied against its tax due for the years 2000, 2001 and 2002 under the principle of first in first out. In taxable year 2003, petitioner declared as 1999 excess tax credits only the amount of P1,818,587.00 *(Exhibit I)* thereby giving the impression that the tax due for the year 2002 was applied against the 1999 tax credits which it already opted to be refunded but actually carried over to the years 2000, 2001, 2002 and 2003.

To understand a little of petitioner's confusing income tax returns submitted in evidence, this Court has made a summary of petitioner's different declarations/computations as follows:

ORIGINAL RETURNS

Taxable Year 2000 (Exhibit A)

			Breakdown of Excess Tax Credits at the end of the year
Minimum Corporate Income Tax Due		P 661,366.00	
Less: Tax Credits			
Prior Year's Excess Credits (1999)		P 2,887,050.00	P 2,225,684.00 (2,887,050.00 less 661,366.00)
Creditable Taxes Withheld			
First Three Quarters	P 2,852,319.00		
Fourth Quarter	914,770.00	3,767,089.00	3,767,089.00
Total Tax Credits		P 6,654,139.00	
Tax Overpayment		P 5,992,773.00	P 5,992,773.00

Taxable Year 2001 (Exhibit E)

Minimum Corporate Income Tax Due		P 426,891.00	
Less: Tax Credits			
Prior Year's Excess Credits			
1999	P 2,225,683.00		P 2,225,683.00
2000	3,767,089.00	P 5,992,772.00	3,767,089.00
Creditable Taxes Withheld			
First Three Quarters	P 3,045,904.00		
Fourth Quarter	2,236,777.00	5,282,681.00	4,855,790.00 (5,282,681.00 less 426,891.00)
Total Tax Credits		P 11,275,453.00	
Tax Overpayment		P 10,848,562.00	P10,848,562.00

Taxable Year 2002 (Exhibit G)

Minimum Corporate Income Tax Due		P 641,372.00
Less: Tax Credits		
Prior Year's Excess Credits		
1999	P 2,225,683.00	
2000	3,767,089.00	
2001	4,855,790.00	P 10,848,562.00

Creditable Taxes Withheld			
First Three Quarters	P 5,031,463.00		
Fourth Quarter	2,423,436.00	7,454,899.00	
Total Tax Credits		P 18,303,461.00	
Tax Overpayment		P 17,662,089.00	

AMENDED RETURNS

Taxable Year 2000 (Exhibit B)

				Breakdown of Excess Tax Credits at the end of the year
Minimum Corporate Income Tax Due			P 661,366.00	
Less:	Tax Credits			
	Prior Year's Excess Credits (1999)		P 2,887,050.00	P 2,887,050.00
	Creditable Taxes Withheld			
	First Three Quarters	P 2,852,319.00		
	Fourth Quarter	914,770.00	3,767,089.00	3,105,723.00 (3,767,089.00 less 661,366.00)
	Total Tax Credits		P 6,654,139.00	
Tax Overpayment			P 5,992,773.00	P 5,992,773.00

Taxable Year 2001 (Exhibit C)

Minimum Corporate Income Tax Due			P 426,891.00	
Less:	Tax Credits			
	Prior Year's Excess Credits (1999)		P 2,886,850.00	P 2,459,959.00 (2,886,850.00 less 426,891.00)
	Creditable Taxes Withheld			
	First Three Quarters	P 3,045,904.00		
	Fourth Quarter	2,236,777.00	5,282,681.00	5,282,681.00
	Total Tax Credits		P 8,169,531.00	
Tax Overpayment			P 7,742,640.00	P 7,742,640.00

Taxable Year 2002 (Exhibit F)

Minimum Corporate Income Tax Due			P 641,372.00	
Less:	Tax Credits			
	Prior Year's Excess Credits			
	1999	P 2,459,959.00		P 1,818,587.00 (2,459,959.00 less 641,372.00)
	2001	5,282,681.00	P 7,742,640.00	5,282,681.00
	Creditable Taxes Withheld			
	First Three Quarters	P 5,031,463.00		
	Fourth Quarter	2,423,436.00	7,454,899.00	7,454,899.00
	Total Tax Credits		P 15,197,539.00	
Tax Overpayment			P 14,556,167.00	P14,556,167.00

ORIGINAL 2003 RETURN (Exhibit I)

Minimum Corporate Income Tax Due			P 900,571.00
Less:	Tax Credits		
	Prior Year's Excess Credits		
	1999	P 1,818,587.00	
	2001	5,282,680.00	
	2002	7,454,899.00	14,556,166.00
	Creditable Taxes Withheld		
	First Three Quarters	P 3,451,696.00	
	Fourth Quarter	194,276.00	3,645,972.00
Tax Overpayment			P 17,301,567.00

AMENDED 2003 RETURN (Exhibit H)

Minimum Corporate Income Tax Due			P 918,284.00
Less:	Tax Credits		
	Prior Year's Excess Credits		
	1999	P 1,818,587.00	
	2001	5,282,680.00	7,101,267.00
Tax Overpayment			P 6,182,983.00

From the above declarations/computations, petitioner applied its minimum corporate income tax (MCIT) due for the period against the 1999 excess tax credits in its original income tax return for the year 2000. For the year 2001, petitioner applied its MCIT against the 2001 excess tax credits in its original income tax return. And for the year 2002, this Court cannot determine where the MCIT for the period was applied against though looking at the original return submitted by petitioner, the MCIT was applied against its total tax credits for the same year.

However, in its amended return for the year 2000, petitioner applied the MCIT against the current or 2000 tax payments. But in its 2001 amended tax return, petitioner applied the MCIT for the period against its 1999 excess tax credits. And in the year 2002 amended income tax return, petitioner again applied the MCIT for the period against its 1999 excess tax credits.

With respect to petitioner's 2003 income tax returns, the MCIT declared in the original return differs from what was reflected in its amended return. But it appears that it applied its MCIT due for the said year against its 1999 and 2001 excess tax credits.

From the foregoing evidence, it is undisputed that petitioner is confused on what is the proper thing to do. For one, it applied its MCIT either from its current or prior year's excess tax credits. Petitioner should have followed the first in first out principle. For another, despite the choice of being refunded for its 1999 excess tax credits, petitioner still carried over the same to the succeeding years. Likewise, having opted to be issued a tax credit certificate for its 2000 excess tax credits, petitioner actually carried over the same to the succeeding years 2001 and 2002. When petitioner amended these returns, it no longer reflected the 2000 excess tax credits. But when it amended its 2003 tax returns, it again carried over the 2000 excess tax credits. Clearly, petitioner's interpretation of the law has gone haywire and this Court cannot countenance the same *(Assailed Decision, pp. 5-10, Rollo, pp. 14-19).*"

To summarize, in petitioner's original 2000 Annual Income Tax Return filed on April 10, 2001, petitioner did not mark any box found in Line 31 to signify its option. And as correctly held in the assailed Decision, if the taxpayer fails to signify his option by marking an "x" on the appropriate box provided in line 31 of BIR Form No. 1702, it is provided in page 4 thereof that "the excess payments shall be automatically be carried-over to the next taxable period".

For the subsequent year, it made simultaneous choices in its 2001 income tax return by marking two options, to be refunded and to be carried over as tax credit next year/quarter, but petitioner's income tax return for the year 2003 showed that petitioner carried over its 2002 tax credits. Thereafter on July 29, 2003, petitioner simultaneously amended its 2001 and 2002 income tax returns so as not to reflect the 2000 excess tax credits. And in its original income tax return for the year 2003 filed on April 15, 2004, petitioner did not declare its excess tax credits for the year 2000. However, when it amended the said return on May 27, 2004, petitioner again included as among the carried over prior years' excess tax credits, the amount of P3,105,723.00 which is the 2000 excess tax credits but excluded the same in computing the excess tax payment for the same period.

Clearly from the foregoing, petitioner exercised varied options relative to its unutilized creditable withholding taxes. In this regard, the Supreme Court ruled in the case of ***Phil-Am Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637 and 162004, December 15, 2005***, that "[u]nder Section 76 of the National Internal Revenue Code, a taxable corporation with excess quarterly income tax payments may apply for either a tax *refund* or a tax *credit*, but not both. The choice of one precludes the other. It further held that the carry-over option under Section 76 is permissive. A corporation that is entitled to a tax refund or a tax credit for excess payment of quarterly income taxes may carry over and credit the excess income taxes paid in a given taxable year against the estimated income tax liabilities of the succeeding quarters. Once chosen, the carry-over option shall be considered irrevocable for that taxable period, and no application for a tax refund or issuance of a tax credit certificate shall be allowed.

Petitioner's act of filing Amended Income Tax Return for taxable year 2000, two (2) years later on March 27, 2003 to indicate its choice to be issued a tax credit certificate, will not undo the act/s already made or exercised by petitioner. Otherwise, Section 76 of the Tax Code, as amended, will be rendered nugatory by the mere act of the taxpayer in amending its income tax return.

Although a taxpayer can aver any mistake or error in its declaration and amend its return not only once, but several times, as the case may be, it is Our considered view, however, that the amendment of returns allowed by Section 6 of the Tax Code, as amended, does not extend to changing the taxpayer's chosen or deemed chosen option under Section 76 of the same Code.

Thus, taking into account that although petitioner did not mark any option on the appropriate box under Line 31 of its original income tax return for the taxable year ended on December 2000, using BIR Form No. 1702, it is provided in page 4 thereof that "the excess payments shall be automatically be carried-over to the next taxable period". And pursuant to Section 76 of the Tax Code, as amended, and the Supreme Court's ruling in the Phil-Am case, once the option to carry over is exercised, the same becomes irrevocable.

It being well settled, therefore, that the option to carry-over the tax credit, once exercised, is irrevocable, petitioner is barred from filing a claim for cash refund or for the issuance of a tax credit certificate corresponding to its unutilized tax credit for the year 2000. Evidently, in its original 2001 income tax return filed on April 15, 2002, petitioner actually carried over the amount of P3,767,089.00 as its 2000 excess tax credits and even applied it against its tax due for the year 2001 under the principle of first in first out basis *(Assailed Decision, p. 12, Rollo, p. 21)*.

Again, it bears stressing that tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be considered *strictissimi juris* against the person or entity claiming the refund ***(Commissioner vs. S.C. Johnson & Sons, Inc. and Court of Appeals, 309 SCRA 87 [1999]; Commissioner vs. Procter and Gamble Philippine Manufacturing Corporation and The Court of Tax Appeals, 204 SCRA 377 [1991])***.

With respect to petitioner's reliance on the decisions of the Honorable Court of Appeals in the cases of Commissioner of Internal Revenue vs. Citicorp Capital Phils., Inc. (CA-G.R. SP No. 68554, 12 April 2002) and Commissioner of Internal Revenue vs. Hopewell Tileman Power Systems, Inc. (CA-G.R. SP No. 60898, 12 March 2002), let it be noted that upon the effectivity of Republic Act No. 9282 on April 23, 2004, expanding the jurisdiction of this Court and elevating its rank equal to that of the Court of Appeals, decisions of the latter court are merely persuasive, but no longer binding, upon this Court. Moreover, the subject issue has been laid to rest in the ruling of the Supreme Court in the consolidated cases of *Phil-Am Management, Inc. vs. Commissioner of Internal Revenue*, discussed earlier.

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. The assailed Decision dated June 6, 2005 and Resolution dated September 21, 2005 are affirmed in toto.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Associate Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice