REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

MINDANAO I GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8093

Members:
BAUTISTA, *Chairperson, and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
MAR 26 2013
1:11 p.m.

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D E C I S I O N

BAUTISTA, J.:

The Petition for Review, filed pursuant to Section 229 of the 1997 National Internal Revenue Code ("NIRC"), as amended,[1] in relation to Section 52 of the same Code,[2] seeks for the refund or issuance of a tax credit certificate in the total amount of

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[1] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – xxx

In any case, no such suit or proceeding shall be filed 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 therefore, 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

[2] SEC. 52. *Corporation Returns.* –

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(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.

₱16,343,159.00, representing excess income tax payments for the calendar year ended December 31, 2007.

FACTS OF THE CASE

Petitioner, Mindanao I Geothermal Partnership, is a general partnership duly registered with the Securities and Exchange Commission ("SEC"), with principal address at 36th Floor, Tower I, The Enterprise Center, 6766 Ayala Avenue, Makati City. It is primarily engaged in the development, financing, construction, ownership, operation, maintenance and transfer of geothermal electric generation plant located at the Mindanao Geothermal Reservation, North Cotabato. Its general partners are Marubeni Pacific Energy Holdings Corporation ("MPEHC") and Marubeni Pacific II Energy Holdings Corporation ("MP2EHC").

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, who holds office at the 4th Floor, Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 2008, petitioner filed its Annual Corporate Income Tax Return (Form No. 1702) for the calendar year ended December 31, 2007. It reported a gross revenue of ₱200,828,848.00, representing income payments subject to creditable withholding tax, and reflected excess income tax payments in the amount of ₱16,343,159.00. It likewise indicated its intention to have the said excess income payments to be carried-over as a tax credit for the succeeding year.

On April 15, 2009, petitioner filed its Annual Corporate Income Tax Return for the calendar year ended December 31, 2008. The earlier-mentioned amount of ₱16,343,159.00 was reflected as "*Prior Year's Excess Credits.*"

On December 22, 2009, the Board of Directors and Stockholders of MPEHC and MP2EHC approved their merger with Axia Power

Holdings Philippines Corporation ("APHPC"), with the latter as the surviving entity. On account of the merger, MPEHC withdrew as a general partner in petitioner.

On March 29, 2010, the SEC approved the merger and withdrawal of MPEHC, which effectively dissolves petitioner as a corporate entity.

On April 15, 2010, petitioner filed with respondent a written request for refund or issuance of a tax credit certificate of its excess income tax payments pursuant to Section 204(C) of the 1997 NIRC, as amended.[3]

On even date, petitioner filed by registered mail the present Petition for Review.[4]

On May 31, 2010, respondent filed her Answer,[5] interposing the following Special and Affirmative Defenses, to wit:

> 4. Petitioner should fully comply with the provisions stated in Revenue Regulations [No.] 6-86 and the requisites enumerated in the case of *CIR vs. PERF Realty Corp., GR No. 163345 dated July 4, 2008*, which states:
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> xxx xxx xxx
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> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

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[3] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamped 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.

[4] *Records*, pp. 1-46, with Annexes.

[5] *Id.*, at pp. 54-59.

6. The case of *Ang Tibay vs. Court of Industrial Relations, GR No. L-46496*, states the primary rights which must be respected even in an administrative proceeding:

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   Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence (*sic*), then the decision will probably be contrary to petitioner. Only the evidence presented (*sic*) will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented (*sic*). Petitioner, however, instead chose not to submit any evidence to support its claim.

7. Sections 204(C) and 229 of the Tax Code require the taxpayer to file a written claim for refund before he could file a judicial claim for refund:

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   Petitioner filed its administrative claim on April 15, 2010, while mailing its judicial claim on April 15, 2010. This shows a clear circumvention of the provisions of the Tax Code making a mockery of the spirit of the law. There was absolutely no intention of the taxpayer (*sic*) to participate in the administrative claim, as its sole purpose was just to meet the minimum requirement of filing a judicial claim.

8. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit (*sic*). This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist

> upon vague implications. (*Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670*).[6]

On August 12, 2010, the parties entered their Joint Stipulation of Facts and Issues.[7]

Trial ensued. Both petitioner and respondent presented and offered their respective documentary and testimonial evidence.

On May 7, 2012,[8] the case was deemed submitted for decision, taking into consideration the Memoranda filed by both petitioner,[9] and respondent,[10] on April 26, 2012.

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

1. WHETHER OR NOT PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR TAX CREDIT FOR ITS EXCESS INCOME TAX PAYMENTS FOR THE CY ENDED DECEMBER 31, 2007 WERE TIMELY FILED WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD PRESCRIBED UNDER SECTION 204(C), IN RELATION TO SECTION 229 OF THE 1997 TAX CODE, AS AMENDED;

2. WHETHER OR NOT PETITIONER HAS EXHAUSTED ALL ADMINISTRATIVE REMEDIES BEFORE FILING THE PETITION FOR REVIEW;

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[6] *Id.*, at pp. 55-57.
[7] *Id.*, at pp. 86-88.
[8] *Id.*, at p. 464.
[9] *Id.*, at pp. 407-451.
[10] *Id.*, at pp. 452-462.

3. WHETHER OR NOT PETITIONER SUBMITTED COMPLETE DOCUMENTARY EVIDENCE WHEN IT FILED ITS ADMINISTRATIVE CLAIM FOR REFUND;

4. WHETHER OR NOT THE EXCESS INCOME TAX PAYMENTS FOR THE CY ENDED DECEMBER 31, 2007 IN THE AMOUNT OF ₱16,343,159.00 REMAINS TO BE UNUTILIZED AND WILL NOT BE UNUTILIZED BECAUSE OF PETITIONER'S CORPORATE DISSOLUTION; and

5. AND IN SUM, WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND OR ISSUANCE OF TCC IN THE AMOUNT OF ₱16,343,159.00 REPRESENTING ITS UNUTILIZED EXCESS INCOME TAX PAYMENTS FOR THE CY ENDED DECEMBER 31, 2007.[11]

To summarize, the issue to be resolved by the Court is essentially on petitioner's entitlement to the claim for refund or issuance of a tax credit certificate for its unutilized and excess income tax payments for the calendar year 2007 in the total amount of ₱16,343,159.00

RULING OF THE COURT

The Court finds the Petition for Review bereft of merit.

Section 76 of the 1997 NIRC, as amended, specifically provides, to quote:

> 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:

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[11] *Id.*, at p. 87.

(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 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.

From the foregoing, two (2) options are provided to a corporation entitled to a refund or tax credit of its total quarterly income tax payments/credits in a given taxable year which exceeds its total income tax due, *viz.*:[12]

1. to carry-over the excess credit; or
2. to apply for the issuance of a tax credit certificate or to claim a cash refund.

And once the option to carry-over has been made, such shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed.[13] The irrevocability rule when taken with the phrase "for that taxable period" refers to that taxable period which the taxpayer made the choice of carry over and not to the next taxable year when the said excess or unutilized tax credits be carried over.[14]

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[12] SC & C Cosmetech Co., Inc., *v.* Commissioner of Internal Revenue, CTA Case No. 6650, June 6, 2005.
[13] Philam Asset Management, Inc. *v.* Commissioner of Internal Revenue, G.R. Nos. 156637 and 162004, December 14, 2005, 477 SCRA 76; Systra Philippines, Inc., *v.* Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007, 533 SCRA 776.
[14] Commissioner of Internal Revenue *v.* Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009, 592 SCRA 219.

Based on the records of the case, petitioner in its Annual Income Tax Return for taxable year 2007,[15] reflected an income tax overpayment in the amount of ₱16,343,159.00, computed as follows:

Income Tax Due	₱22,563,735.00
Less: Tax Credits/Payments	
Prior Year's Excess Credits other than MCIT	15,016,156.00
Tax Payments for the First Three Quarters	16,960,435.00
Creditable Tax Withheld for the First Three Quarters	5,389,775.00
Creditable Tax Withheld for the Fourth Quarter	1,540,527.00
Total Tax Credits/Payments	₱38,906,894.00
Tax Payable (Overpayment)	**₱(16,343,159.00)**

In the same Annual Income Tax Return for the taxable year 2007, petitioner opted to carry-over the income tax overpayment of ₱16,343,159.00 to the succeeding quarter/s by marking the box corresponding to the said choice in the return.[16] Applying the earlier-quoted provision, and to reiterate, once the carry-over option has been actually or constructively made, the same becomes irrevocable for that taxable period.

Nonetheless, records show that MPEHC, one of the general partners of petitioner, filed with the SEC an Affidavit of Withdrawal from Partnership,[17] which was duly approved on March 29, 2010.[18] Thus, the said withdrawal effectively dissolved petitioner as a corporate entity.

In the case of *Systra Philippines, Inc., v. Commissioner of Internal Revenue*,[19] the Supreme Court ruled that when a corporation permanently ceases its operation before full utilization of its tax credits which it had opted to carry-over, it may then be allowed to claim the refund of its remaining tax credits; in such case, the remaining tax credits can no longer be carried-over and the irrevocability rule ceases to apply.

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[15] *Exhibit "B."*
[16] *Exhibit "B,"* Line 31.
[17] *Exhibit "A-2."*
[18] *Exhibit "A."*
[19] G.R. No. 176290, September 21, 2007, 533 SCRA 776.

Therefore, notwithstanding that Section 76 of the 1997 NIRC, as amended, specifically provides the irrevocability rule, justice and fairplay provides that in the event of cessation of business, it may still opt to claim for refund, albeit it previously exercise the irrevocable option to carry-over, considering that it can no longer utilize such excess credits. With the surrounding factual milieu present in the case at bench, petitioner's reported excess tax credits/payments for the year ended December 31, 2007 in the amount of ₱16,343,159.00 may still be the subject of a claim for refund.

Petitioner then must comply with the following requisites in order to be entitled to a refund of unutilized excess creditable taxes withheld at source: [20]

1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the NIRC of 1997;

2. That the fact of withholding is established by a copy of a statement fuly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That the income upon which the taxes were withheld were included in the return of the recipient.

Corollary thereto, Sections 204(C) and 229 of the 1997 NIRC, as amended, provide *scilicet*:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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[20] Citibank N.A. *v.* Court of Appeals and CIR, G.R. No. 107434, October 10, 1997, 280 SCRA 459; ACCRA Investment Corporation *v.* Court of Appeals, G.R. No. 96322, December 20, 1991, 204 SCRA 957; Commissioner of Internal Revenue *v.* Mirant (Philippines) Operations Corporation, G.R. No. 171742, June 15, 2011, 652 SCRA 80; See also Section 2.58 of Revenue Regulations No. 2-98, as amended.

> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamped 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.
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> 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 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.
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> In any case, no such suit or proceeding shall be filed 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 therefore, 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.

From the foregoing quoted provisions, the administrative and judicial remedies of filing a claim for refund of erroneously or excessively paid tax must be done within two (2) years from the date of payment of the tax.

For actions for refund of excess corporate income tax, the two (2)-year prescriptive period should be counted from the filing of the final adjustment return or annual income tax return, for it is only during that date that the exact tax liability or refundability of the tax can be determined.[21]

Moreover, when the two (2)-year period is about to prescribe and the claim for refund with the Commissioner has not been acted upon, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with this Court within the said two (2)-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two (2)-year period, he can no longer appeal the same to this Court.[22]

Thus, it is not necessary for the Commissioner to act unfavorably on the claim for refund before this Court may acquire jurisdiction because of the positive requirement of Section 229, and the doctrine that any delay of the Commissioner in rendering a decision does not extend the peremptory period fixed by the statute. Neither is it required under the law that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the Court to review the ruling on appeal. The law fixed the same period — two (2) years — for filing a claim for refund with the CIR [Section 204(C)], and for filing suit in Court [Section 229],[23] and as long as these two acts fall within this period then, there is no legal impediment to the judicial claim for refund.[24]

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[21] Commissioner of Internal Revenue *v.* TMX Sales, Inc. and the Court of Appeals, G.R. No. 83736, January 15, 1992, 205 SCRA 184; ACCRA Investments Corporation *v.* Court of Appeals, G.R. No. 96322, December 20, 1991, 204 SCRA 957.

[22] Commissioner of Internal Revenue *v.* Hitachi Computed Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002, *citing Gibbs v. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil 232;* Johnson Lumber Co. *v.* CTA, 101 Phil 151.

[23] Commissioner of Internal Revenue *v.* Bank of the Philippine Islands, as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA G.R. SP No. 34102, September 19, 1994.

[24] Manila Electric Company *v.* The Commissioner of Internal Revenue, CTA Case No. 5091, October 2, 1997.

In the case at bench, petitioner filed its Annual Income Tax Return for calendar year 2007 on April 15, 2008.[25] Counting from said date, petitioner had until April 15, 2010 to file a claim for refund of its excess tax credits/payments for the year 2007 both in the administrative and judicial fora. Thus, petitioner seasonably filed its administrative claim for refund with respondent on April 15, 2010[26] and its judicial claim for refund through the present Petition for Review on even date.

To proceed, petitioner's total income tax credits/payments of ₱38,906,894.00, from which the income tax due for 2007 in the amount of ₱22,563,735.00 was deducted, is tabulated below:

Prior Year's Excess Credits other than MCIT	₱ 15,016,156.00
Tax Payments for the First Three Quarters	16,960,435.00
Creditable Tax Withheld for CY 2007	6,930,303.00[27]
Total	**₱ 38,906,894.00**

For the creditable tax withheld for the calendar year 2007 in the amount of ₱6,930,303.00, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) duly issued to it by Mindanao II Geothermal Partnership and PNOC Energy Development Corporation, detailed as follows:

Exhibit	Withholding Agent/Payor	Period Covered		Income Payment	Income Tax Withheld
"B-9" to *"B-10"*	Mindanao II Geothermal Partnership	1/1/2007	3/31/2007	₱ 4,866,231.99	₱ 243,311.60
"B-11" to *"B-12"*	PNOC Energy Development Corp.	2/1/2007	2/28/2007	35,437,539.28	708,750.80
"B-13" to *"B-14"*	PNOC Energy Development Corp.	3/1/2007	3/31/2007	29,389,766.50	587,795.33
"B-15" to *"B-16"*	Mindanao II Geothermal Partnership	4/1/2007	6/30/2007	(2,064,732.00)	(103,236.60)
"B-17" to *"B-18"*	PNOC Energy Development Corp.	4/1/2007	6/30/2007	87,334,585.50	1,746,691.71
"B-19" to *"B-20"*	PNOC Energy Development Corp.	7/1/2007	9/30/2007	110,323,131.50	2,206,462.63
"B-21" to *"B-22"*	PNOC Energy Development Corp.	10/1/2007	12/31/2007	77,026,373.00	1,540,527.46
Total				**₱342,312,895.77**	**₱ 6,930,302.93**

From the foregoing, petitioner was able to substantiate the actual amount of ₱6,930,302.93.

[25] *Records*, p. 86.
[26] *Exhibit "D"*; *Records*, pp. 253-255.
[27] Erroneously indicated as ₱6,930,302.00.

However, for the prior year's excess credits in the amount of ₱15,016,156.00, and the tax payments for the first three quarters in the amount of ₱16,960,435.00, petitioner failed to submit Certificates of Creditable Taxes Withheld at Source and Annual Income Tax Returns for prior years, and Quarterly Income Tax Returns (1702Q) for the first three quarters of calendar year 2007. Mere declaration of prior year's excess credits of ₱15,016,156.00 and quarterly income tax payments of ₱16,960,435.00 will not suffice, considering that this Court is a "court of record," thus, cases filed before this forum are litigated *de novo*, and party litigants are required to prove every minute aspect of its case.[28]

Thus, for failure of petitioner to establish the amounts of its prior year's excess credits in the amount of ₱15,016,156.00, and its tax payments for the first three quarters in the amount of ₱16,960,435.00, only the substantiated amount of ₱6,930,302.93 shall be considered by this Court.

And inasmuch only the amount of ₱6,930,302.93 has been properly substantiated, as compared to the reflected income tax liability in its Annual Income Tax Returns for the CY 2007 in the amount of ₱22,563,735.00, petitioner has no excess income tax credit/payments that may be the proper subject of a claim for refund.

Therefore, this Court has no recourse but to deny the present claim for insufficiency of evidence.

WHEREFORE, the Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[28] Commissioner of Internal Revenue *v.* Manila Mining Corporation, G.R. No. 153204, August 31, 2005, 468 SCRA 571.

I CONCUR:

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice