REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **PHILIPPINE AIRLINES, INC. (PAL),** Respondent.	**CTA EB No. 749** **(CTA Case No. 6877)**
PHILIPPINE AIRLINES, INC. (PAL), Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB No. 757** **(CTA Case No. 6877)** *Present:* **ACOSTA,** *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **PALANCA-ENRIQUEZ,** **FABON-VICTORINO,** **MINDARO-GRULLA,** *and* **COTANGCO-MANALASTAS,** *JJ.* **Promulgated:** AUG 14 2012 11:10am

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DECISION

UY, *J.*:

Before the Court *En Banc* are the following consolidated Petitions for Review, namely:

(a) **CTA EB No. 749** filed by the Commissioner of Internal Revenue (hereinafter referred to as the "Commissioner") against Philippine Airlines, Inc. (hereinafter referred to as "PAL"); and

(b) **CTA EB No. 757** filed by PAL against the Commissioner.

Both petitions assail the Decision[1] rendered by the Special First Division of this Court (or "Court in Division") on November 9, 2010 in **CTA Case No. 6877** entitled *"Philippine Airlines, Inc. (PAL), Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portion of which read:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the reduced amount of P1,237,646.43, representing the 20% final income tax withheld and remitted by JP Morgan Chase Bank on petitioner's interest income; while the remaining claim of P510,223.16 and US$65,877.07, representing the final income tax withheld by China Banking Corporation, Philippine Bank of Communication and Standard Chartered Bank are hereby **DENIED** due to insufficiency of evidence.
>
> **SO ORDERED.**"

Particularly, the Commissioner prays for the setting aside of the said Decision, and for the issuance of a new Decision denying the entire claim for refund of PAL in CTA EB No. 749; while PAL prays for the reconsideration and reversal of the said Decision, insofar as the Court in Division denied the refund of ₱ 510,233.16 and US$65,877.07, supposedly representing the final income tax withheld by China Banking Corporation (or "CBC"), Philippine Bank of Communication (or "PBC"), and Standard Chartered Bank (or "SCB") in CTA EB

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[1] Penned by Associate Justice Lovell R. Bautista, and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova. Docket (CTA EB No. 749), pp. 15 to 34; Docket (CTA EB No. 757), pp. 98 to 117.

No. 757.

THE FACTS

The Commissioner is duly appointed as such, and empowered to perform duties of said office including, among others, the duty to act upon and approve claims for refunds or tax credits as provided by law. She holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, PAL is a domestic corporation organized in accordance with the laws of the Republic of the Philippines, with principal office at the 9th Floor, PAL Center, Legazpi St., Legazpi Village, Makati City.

For the year 2002, PAL allegedly made several US dollar and Philippine peso deposits or placements in different banks in the Philippines, namely, CBC, JP Morgan Chase Bank (or "JPMCB"), PBC, and SCB.

On its U.S. dollar time deposit with CBC for the period starting January 1, 2002 and ending December 31, 2002, PAL claims that it earned interest income net of 7.5% withholding tax in the total amount of US$480,688.76, as evidenced by the latter's Certification dated October 24, 2003, signed by Wilfredo A. Quijencio, Senior Manager, International Banking Group. PAL further asserts that as stated in the aforementioned Certification, withholding taxes were deducted from said interest income totaling US$38,974.75, which taxes were remitted to the BIR on different dates starting on February 11, 2002 and ending January 10, 2003.

On PAL's peso deposit with JPMCB during the months of September 2002 to December 2002, PAL maintains that it earned interest income in the amount of

₱ 6,188,232.17 from which was deducted withholding tax totaling ₱ 1,237,646.43.

On its various dollar placements with PBC for the year 2002, PAL claims that it also earned interest income thereon and the corresponding final withholding taxes were deducted as follows:

CERTIFICATE FOR THE PERIOD	INTEREST INCOME	TAX WITHHELD
First Quarter	US$102,648.40	US$ 7,698.63
Second Quarter	US$ 22,653.20	US$ 1,698.00
Third Quarter	US$ 40,123.73	US$ 3,009.28
Fourth Quarter	US$107,163.73	US$ 8,037.28
TOTAL	US$272,589.06	US$20,443.19

On PAL's deposit with PBC for the year 2002, PAL allegedly also earned interest income thereon and the corresponding final withholding taxes were deducted as follows:

CERTIFICATE FOR THE PERIOD	INTEREST INCOME	TAX WITHHELD
Second Quarter	₱ 541,758.42	₱ 108,351.67
Third Quarter	₱ 2,009,357.41	₱ 401,871.46
TOTAL	₱ 2,551,115.83	₱ 510,223.13

The taxes withheld by PBC from the above-enumerated interest income of PAL for the year 2002 had been purportedly remitted by PBC to the BIR, as evidenced by a letter dated April 10, 2003 of PBC's Branch Manager Ms. Carmencita L. Tan.

On PAL's dollar time deposit with SCB for the period May 2002 to December 2002, PAL allegedly also earned US$86,107.55 interest income, and the corresponding 7.5% final withholding tax amounting to US$6,458.14 was deducted therefrom and remitted to the BIR.

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On November 3, 2003, PAL's Assistant Vice President for Financial Planning and Analysis, Ms. Ma. Stella L. Diaz, filed with the Office of the Commissioner, a written request for refund of the amounts of ₱ 1,747,869.59 and US$65,877.07, representing final withholding taxes erroneously withheld from PAL by CBC, JPMCB, PBC, and SCB for the year 2002. As stated in the written request, the tax refund was being claimed by PAL by virtue of its exemption from said tax under its franchise, Presidential Decree (PD) No. 1590, which only subjects PAL to either the basic corporate income tax or the two percent (2%) franchise tax, whichever of the two will result in a lower tax; in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature or description imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency.

Due to the inaction of the Commissioner, PAL elevated its case by way of a Petition for Review before the Court in Division on February 24, 2004.

The Commissioner, in her Answer filed on March 25, 2004, raised these Special and Affirmative Defenses, to wit: that petitioner's claim is subject to administrative routinary investigation/examination by the Bureau; that its claim was not properly documented; that it must show compliance with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit; and that claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation.

During trial, PAL presented documentary and testimonial evidence in support of its claim. On the other hand, the Commissioner's counsel manifested that the Commissioner was submitting the case for decision based on the pleadings.

As directed by the Court in Division, the Commissioner submitted her Memorandum on October 22, 2009 while PAL submitted its Memorandum on November 23, 2009. Thus, CTA Case No. 6877 was considered submitted for decision in the Resolution dated November 24, 2009.

Thereafter, the Court in Division rendered the assailed Decision on November 9, 2010, partially granting PAL's Petition for Review. It ordered the Commissioner to refund PAL the amount of ₱ 1,237,646.43, representing the 20% final income tax withheld and remitted by JPMCB on PAL's interest income. However, the remaining claim of ₱ 510,223.16 and US$65,877.07, representing the final tax withheld by CBC, PBC, and SCB, were denied for insufficiency of evidence.

On December 2, 2010, the Commissioner filed her Motion for Reconsideration, arguing that the Court in Division erred in ruling that PAL is entitled to the reduced amount of ₱ 1,237,646.43. For its part, PAL filed its Motion for Reconsideration on December 16, 2010, contending to the effect that it has presented and offered ample amount of evidence to be entitled to the remaining claim of ₱ 510,223.16 and US$65,877.07. Correspondingly, the parties were ordered to file their respective comment on each other's Motion for Reconsideration.[2] PAL filed its required Comment on December 23, 2010; while the Commissioner filed her Opposition on January 14, 2011. The parties respectively prayed for the denial of the other's Motion for lack of merit.

[2] Division Docket, pp. 916 and 999.

Finding no cogent reason to disturb, reverse or modify its Decision, both Motions for Reconsideration were denied by the Court in Division in the Resolution dated March 17, 2011.[3]

Undaunted, the Commissioner filed the present Petition for Review docketed as CTA EB No. 749 before the Court *En Banc*, praying for the setting aside of the said Decision, and for the issuance of a new Decision denying the entire claim for refund of PAL.

On the part of PAL, it filed the instant Petition for Review docketed as CTA EB No. 757, praying for the reconsideration and reversal of the above-stated Decision, insofar as the Court in Division denied the refund of ₱ 510,233.16 and US$65,877.07, supposedly representing the final income tax withheld by CBC, PBC, and SCB, due to alleged insufficiency of evidence.

Considering that both cases are appeals from the same Decision, CTA EB No. 757 was consolidated with CTA EB No. 749 on May 4, 2011.[4]

PAL filed its Comment on May 12, 2011 in CTA EB No. 749[5], while the Commissioner filed her Comment on June 16, 2011 in CTA EB No. 757.[6] In the Resolution dated July 7, 2011,[7] both parties were ordered by the Court *En Banc* to file their respective consolidated memorandum within thirty (30) days from receipt thereof.

On July 20, 2011, a Manifestation[8] was filed by the Commissioner, manifesting that she is adopting her Petition for Review as compliance to the

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[3] Docket (CTA EB No. 749), pp. 35 to 39; Docket (CTA EB No. 757), pp. 118 to 122.
[4] CTA *En Banc* Minute Resolution dated May 4, 2011, Docket (CTA EB No. 749), p. 46.
[5] Docket (CTA EB No. 749), pp. 48 to 73.
[6] Docket (CTA EB No. 757), pp. 184 to 188.
[7] Docket (CTA EB No. 749), pp. 80 to 81.
[8] Docket (CTA EB No. 749), pp. 82 to 84.

Resolution dated July 7, 2011. Said Manifestation was noted by the Court *En Banc*.[9]

On August 22, 2011, PAL likewise filed a Manifestation[10], manifesting that it is adopting its Petition for Review as compliance with the same Resolution. In the same Manifestation, PAL also adopts its Comment dated May 10, 2011 on the Commissioner's Petition for Review in CTA EB No. 749, as part of its Memorandum. The Court *En Banc* took note of the said Manifestation of PAL.[11]

On September 21, 2011, the Court *En Banc* deemed the instant consolidated cases submitted for decision.[12]

Hence, this Decision.

THE ISSUE RAISED BY THE COMMISSIONER IN
CTA EB No. 749

In her Petition for Review, the Commissioner raises the following issue:

> "Petitioner CIR respectfully files this instant Petition for Review on the sole issue of whether the Honorable Court erred in ruling that PAL is entitled to the refund in the amount of P1,237,646.43 representing the 20% final income tax withheld and allegedly remitted to JP Morgan Chase Bank on PAL's interest income for the year 2002."

Commissioner's Arguments

The Commissioner's main thesis is that claims for refund partake the nature of tax exemption and are thus, strictly construed against the claimant. According to the Commissioner, 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

[9] CTA *En Banc* Minute Resolution dated July 22, 2011, Docket (CTA EB No. 749), p. 86.
[10] Docket (CTA EB No. 749), pp. 87 to 88.
[11] CTA *En Banc* Minute Resolution dated July 22, 2011, Docket (CTA EB No. 749), p. 89.
[12] Resolution dated September 21, 2011, Docket (CTA EB No. 749), pp. 92 to 93.

fatal to the claim for refund/credit.

According to the Commissioner, PAL was unable to present any competent witnesses to testify on the validity of the contents of the alleged monthly remittance returns and that such a failure is a fatal error in accordance with the established rules of evidence.

Furthermore, the Commissioner contends that assuming that the entries in the alleged monthly remittance returns of the final income taxes withheld were duly identified by competent witnesses, PAL miserably failed to submit to the BIR copies of the monthly remittance returns of final income taxes withheld when it filed its claim for refund. The Commissioner points out that it was only before the Court in Division that said returns were submitted and presented.

PAL'S ASSIGNMENT OF ERROR IN
CTA EB No. 757

In its Petition for Review, PAL assigns the following errors supposedly committed by the Court in Division, viz:

PAL'S Arguments

As regards the first assigned error, PAL argues that contrary to the Decision of the Court in Division, it has been decided earlier by this Court in various cases, involving claims for refund of taxes withheld, that the Certificates of income tax withheld by the various depository banks of PAL, are sufficient, and that there is no need to prove the actual remittance by the withholding agent or payor to the BIR.

Anent the second assigned error, PAL further argues that the Certifications from PAL's various banks were actually corroborated by other documentary evidence to show that the amounts withheld from PAL were actually remitted to the BIR, or were included as part of those remitted by PAL's various banks to the BIR.

In conclusion, PAL contends that it has aptly complied with the proof on the fact of remittance, and that it was able to corroborate the certifications given by CBC, PBC, and SCB, with other documentary evidence to show that the amounts certified to have been withheld from PAL were actually remitted to the BIR. Thus, according to PAL, said certifications should be given credence and the amounts of final taxes certified to by them as having been withheld from PAL and remitted to the BIR, be ordered refunded to PAL.

THE COURT EN BANC'S RULING

PAL was able to establish its entitlement to the amount of ₱ 1,237,646.43.

Contrary to the assertions of the Commissioner, the monthly remittance returns, *i.e.*, Exhibits "D-10" and "D-13", were identified by PAL's witness, Ms. Cecille S. Reyes, a Middle Office Analyst of JPMCB, in her Affidavit dated November 29, 2007, which was marked as Exhibit "D-15".[13]

Furthermore, the said Exhibits, *inter alia*, were formally offered by PAL, without objection on the part of the Commissioner,[14] and were accordingly admitted by the Court in Division per its Resolution dated June 19, 2009.[15] It must be emphasized that objection to the admissibility of evidence, if not made at

[13] Division Docket, pp. 592 to 604.
[14] COMMENT (Re: Petitioner's Formal Offer of Evidence), Division Docket, pp. 785 to 787.
[15] Division Docket, p. 790.

the time such evidence is offered, shall be deemed waived.[16] Thus, the Commissioner cannot now question the admissibility of the said Exhibits.

Anent the Commissioner's argument that it is only before the Court in Division that the monthly remittance returns were submitted and presented, suffice it to state that this Court is a court of record, and as such it is required to conduct a forma trial (trial *de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[17]

There being no valid basis on the contentions of the Commissioner, We see no cogent reason to disturb or modify the finding of the court *a quo* that PAL is entitled to refund claim in the amount of ₱ 1,237,646.43, representing the 20% final income tax withheld and remitted by JPMCB on PAL's interest income.

The fact of remittance of the remaining amount of the refund claim was not properly documented.

Admittedly, in the cases cited by PAL,[18] this Court has ruled to the effect that proof of remittance is the responsibility of the withholding agent and not of the taxpayer or refund claimant. Such ruling is anchored on the last paragraph of Section 2.58.3(B), Revenue Regulations No. 2-98,[19] to wit:

"Proof of remittance is the responsibility of the withholding agent."

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[16] *People of the Philippines vs. Enfermo*, G.R. Nos. 148682-85, November 30, 2005; *Abrenica vs. Gonda, et al.*, G.R. No. 10100, August 15, 1916, 34 Phil. 739.
[17] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[18] *Commissioner of Internal Revenue vs. Mitsubishi Motors Philippines Corporation*, CTA EB No. 296, December 18, 2007; *Commissioner of Internal Revenue vs. F.F. Cruz & Co., Inc.*, CTA EB No. 372, June 12, 2008; and *Commissioner of Internal Revenue vs. Roxas Land Corporation*, CTA EB No. 407, February 18, 2009.
[19] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes

However, in all of the said cases, the issue as to whether or not there was actual remittance of the withheld taxes to the BIR was never put in issue. This is not so in the instant case.

One of the issues presented by the parties for resolution of the Court in Division is:

> "**Whether or not** the PHP1,747,869.59 and US$65,877.07 being claimed by petitioner as representing the 20% and 7½%, respectively, final income taxes erroneously withheld by the depositary banks from the interest income of PAL for the period January 2002 to December 2002, as well as, **the remittance thereof to the BIR, are properly documented**."[20] *(Emphases supplied)*

Courts of justice have no jurisdiction or power to decide a question not in issue.[21] For a judgment going outside the issues and purporting to adjudicate something upon which the justices were not heard is not merely irregular, but extrajudicial and invalid.[22] Thus, in rendering decisions, courts ought to limit themselves to the issues presented by the parties in their pleadings.[23] The Court in Division has done precisely that.

To the mind of the Court *En Banc*, the Court in Division made an inquiry as to the fact of remittance of the amounts being refunded and accordingly, made a ruling relative thereto, precisely because the parties raised the same as an issue. Furthermore, it is noteworthy that it was PAL who framed the same issue in its Pre-Trial Brief.[24] Thus, PAL cannot now argue that there is no need to

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[20] Division Docket, p. 69.
[21] *Lim Toco vs. Go Fay,* 80 Phil. 166*; Ramon vs. Ortuzar,* 89 Phil. 730*; Belandres vs. Lopez Sugar,* 97 Phil. 100.
[22] *Salvante vs. Cruz, 88 Phil. 236; Lazo vs. Rep. Surety, 31 SCRA 329; Cebu Portland vs. Dumon, G.R. No. 26738, 2 November 1974; Viajar vs. Court of Appeals, 168 SCRA 405; Sarmiento vs. Court of Appeals, G.R. No. 83138, 17 October 1989; Pe vs. Intermediate Appellate Court, G.R. No. 74781, 13 March 1991; Bernas vs. Court of Appeals, G.R. No. 85041, 5 August 1993.*
[23] *Liga vs. Allegro Resources Corp., G.R. No. 175554, 23 December 2008.*
[24] Division Docket, p. 45.

prove the actual remittance by the withholding agent or payor to the BIR of the supposedly withheld taxes.

The pertinent question then is this: Was petitioner able to prove before the Court in Division the proper documentation of the remittance to the BIR of the taxes withheld by CBC, PBC, and SCB from the interest income of PAL?

The answer is in the negative.

In fact, a circumspect perusal of the presented and offered evidence would reveal that the Court in Division is correct in finding that PAL failed to prove the actual remittance of the taxes withheld by CBC, PBC, and SCB from the interest income on its bank deposits.

Anent the supposed taxes withheld by CBC, PAL alleges that the paper trail goes through six (6) stages, to wit: (1) the preparation of a Return of Final Income Tax Withheld on Interest paid (BIR Form No. 1747); (2) on the basis of such return, the preparation of the FCDU Schedule of Final Income Tax Withheld for the month; (3) on the basis of such Schedule, the preparation of a Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No, 1602); (4) the preparation of a monthly Consolidated Schedule of Final Income Tax Withheld on interest; (5) on the basis of such Consolidated Schedule, the preparation of the CBC Consolidated Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1602); and (6) after the checking and signing by CBC's Senior Assistant Vice President, the total tax due appearing on BIR Form No. 1602 is remitted to the BIR through the Electronic Fund Transfer Instruction System of the *Bangko Sentral*. In this connection, PAL contends that the *"total amount of final withholding tax remitted to the BIR is already under Stage 6 of the paper* *trail, while the final income withheld by CBC from* [PAL] *is under Stage 1, but which after going through the different stages ends up being included in the total amount of final withholding tax remitted to the BIR."*[25]

Without doubt, there were amounts of withheld taxes which have been remitted by CBC to the BIR. However, from the supposed Stage 1 up to the last Stage of the paper trail, We fail to see, in the evidence pointed out by PAL, the inclusion of the final income taxes withheld from its interest income in the total amounts remitted by CBC to the BIR. In other words, there is no indication that the specific withheld amounts which have been remitted to the BIR by CBC referred to the taxes withheld on PAL's interest income. In fact, PAL's documentary evidence[26] are merely to the effect that certain amounts have been remitted to the BIR by CBC, and such amounts may be broken down as to which CBC branch offices the same are attributable.

The same holds true as regards the taxes withheld by PBC and SCB. The documentary evidence[27] of PAL relating to the supposed remittances of the said depositary banks are also wanting of any sign that portion of the remitted taxes pertain to the withheld taxes from PAL's interest income. Simply put, We cannot perceive, from such evidence, that pertinent items of the withheld taxes are attributable to PAL.

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[25] Docket (CTA EB No. 757), p. 47.

[26] Exhibits "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", "SS", including their respective sub-markings.

[27] Exhibits "E-1-a" to "E-1-c", "E-2-a to E-2-f", "E-3", "E-4", "E-5", "E-6", "E-7", "E-8", "F-1", "F-2", "F-3", "F-4", "F-5", "F-6", "F-7", "F-8", "F-9", "F-10", "F-11", "F-12", "F-13", "F-14", "G-1", "G-3", "G-4", "G-5", "G-6", "G-7", "G-8", "G-9", "G-10", "G-11", "G-12", "G-13", "G-14", "G-15", "G-16", "H-1", "H-2", "H-3", "H-4", "H-5", "H-6", "H-7", "H-8-a" to "H-8-b", "J-2", "J-3", "J-4", "J-5", "J-6", "J-7", "J-8", "J-9", "J-10", "J-11", "J-12", "J-13", "J-14", "J-15", "J-16", "J-17", including their respective sub-markings.

Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[28]

WHEREFORE, all the foregoing considered, the Commissioner's Petition for Review in CTA EB No. 749 and PAL's Petition for Review in CTA EB No. 757 are hereby **DENIED** for lack of merit. The assailed Decision dated November 9, 2010 and Resolution dated March 17, 2011 are hereby **AFFIRMED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[28] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company*, G.R. No. 173854, March 15, 2010.

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