REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6976

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
NOV 2 1 2007
4:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review seeking the cancellation and withdrawal of Final Assessment Notice No. EWT-97-000029 for alleged deficiency expanded withholding tax in the amount of THIRTY TWO MILLION NINE HUNDRED NINETY EIGHT THOUSAND ONE HUNDRED FOUR AND 90/100 PESOS (P32,998,104.90), covering the taxable period 1997.

The facts as admitted by the parties and as culled from the records of the case are as follows:

Petitioner is a domestic corporation duly registered before the Securities and Exchange Commission (SEC), with business address at the

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12th Floor Telecoms Plaza Bldg., 316 Senator Gil Puyat Avenue, Makati City, Metro Manila.[1]

Respondent is the duly appointed Commissioner of Internal Revenue mandated by law to enforce and implement the National Internal Revenue Code and related statutes, including, among others, the power to cancel disputed assessments. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[2]

On August 31, 2001, as a result of an investigation pursuant to the revalidated Letter of Authority No. 00059010[3] dated April 12, 2000, the Assistant Commissioner for the BIR Large Taxpayer Service, Virginia L. Trinidad, issued against petitioner a Preliminary Assessment Notice (PAN) and Details of Discrepancies for deficiency income tax, withholding tax on compensation, expanded withholding tax (EWT), and value added tax (VAT) for taxable year 1997.[4]

On December 18, 2001, petitioner filed with the BIR its protest against the PAN.[5] On same date, petitioner also wrote the BIR and claimed that it had remitted the amount of P10,298,510.00 as payment for Capital Gains Tax (CGT), but was intended as payment for withholding tax, due from petitioner's purchase of real property in Pasig City. Thus, it requested the setting aside of the tax assessment as it had complied with its obligation as withholding agent.[6]

[1] Par. 1, Joint Stipulation of Facts and Issues, Docket, p. 60.
[2] Par. 2, Joint Stipulation of Facts and Issues, Docket, p. 60.
[3] BIR Records, p. 17.
[4] Exhibit "1", BIR Records, pp. 365-358.
[5] BIR Records, pp. 370-371.
[6] BIR Records, p. 372.

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On January 21, 2002, petitioner received a Final Assessment Notice (FAN) No. EWT-97-000029, with Letter of Demand and Details of Discrepancy, for deficiency expanded withholding tax.[7] The discrepancy was computed as follows:

Deficiency Expanded Withholding Tax

Acquisition of Land	238,438,500.00
Multiply by Rate	7.5%
Creditable W/H Tax Due	17,882,887.50
EWT Remitted	0.00
Basic W/H Tax Due	17,882,887.50
Add: Increments -	
Interest (1/26/1998 to 4/15/2002)	15,090,217.40
Compromise Penalty	25,000.00
	15,115,217.40
Amount due and collectible	32,998,104.90

On February 20, 2002, petitioner filed a protest letter disputing the validity of the subject EWT assessment.[8]

On March 31, 2004, petitioner received respondent's letter affirming the assessment and demanding payment of the deficiency expanded withholding tax for 1997. The letter constituted respondent's final decision on the protest.[9]

Hence, on April 30, 2004, petitioner filed before this Court a Petition for Review. It alleged that consistent with the Court's ruling in the case of **Universal Molasses Corporation v. Commissioner of Internal Revenue**[10], petitioner cannot be held liable for the deficiency EWT since the sale of land could not be perfected pending the resolution of the issue of ownership. As regards the property located in Pasig City, petitioner claimed that it already paid the EWT in the amount of P10,298,510.00, but mistakenly remitted as

[7] Pars. 3 and 4, Joint Stipulation of Facts and Issues, Docket, pp. 60-61; BIR Records, pp. 509-514.
[8] Par. 5, Joint Stipulation of Facts and Issues, Docket, p. 61; BIR Records, pp. 569-571.
[9] Par. 7, Joint Stipulation of Facts and Issues, Docket, p. 61; BIR Records, pp. 603-606.
[10] *C.T.A. Case No. 5467, March 26, 1999.*

CGT. Petitioner likewise contended that the January 18, 2002 assessment was issued beyond the three-year prescriptive period, since petitioner filed its 1997 tax return on April 15, 1998, respondent only had until April 15, 2001 within which to issue an assessment. Furthermore, the Final Letter of Demand and Assessment Notice were issued in violation of the due process requirement under the tax law and BIR rules and regulations.

On June 21, 2004, respondent filed his Answer and alleged the following Special and Affirmative Defenses:[11]

> "3. There was a perfected contract of sale of the land in Cavite. Investigation revealed that Transfer of Certificate of Title No. T-630341 in the name of the seller Florinda V. Estrada was cancelled and Transfer of Certificate of Title No. 649189 was issued in the name of petitioner.
>
> 4. Reliance of petitioner in the case of Universal Molasses Corporation vs. CIR (C.T.A. Case No. 5467, March 26, 1999) is misplaced, because this case involves capital gains tax on the sale of shares of stocks, not EWT which is the subject of the assessment in the instant petition.
>
> 5. Petitioner could not present the actual returns to prove its claim that it had mistakenly paid capital gains tax, instead of EWT, in the amount of P10,298,510.00 with regard to the purchase of lots in Pasig City. Hence, no reduction in the amount of deficiency assessments can be made.
>
> 6. The right of respondent to issue the assessment has not yet prescribed when it was issued on January 18, 2002, because Ms. Analie M. Bulaoro, petitioner's authorized representative, signed a 'Waiver of the Statute of Limitations' dated December 19, 2000, extending the prescriptive period to December 31, 2001 and on August 28, 2001, another waiver further extending the period to April 15, 2002.
>
> 7. All presumptions are in favor of the correctness of tax assessments."

[11] Docket, pp. 31-32.

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Now, the parties submit the following issues[12] for the Court's resolution:

"I. Whether or not, as regards the sale of property located in Cavite, the imposition of the subject deficiency EWT was proper;

II. Whether or not, as regards the sale of property located in Pasig City, the imposition of the subject deficiency EWT assessment was proper;

III. Whether or not the Petitioner is liable to pay the amount of P32,998,104.90 as deficiency EWT for taxable year 1997; and

IV. Whether the right of Respondent to issue an assessment against the Petitioner has already prescribed at the time the Respondent issued the subject final assessment notice on 18 January 2002."

Generally, a sale or exchange of assets will have an income tax incidence only when it is consummated. And, there is sale or exchange of assets when the following elements are present: (1) transfer; and, (2) consideration.[13] Furthermore, a contract of sale is perfected by mere consent, upon a meeting of the minds on the offer and the acceptance thereof based on subject matter, price and terms of payment.[14] And, the contract of sale is consummated when both parties have fully complied with their respective obligations.[15]

Records show that there were several sales involving real property, to wit:

Seller	Document		Amount	BIR Records
1.Edita Lim Chua	Deed of Absolute Sale	TCT No. PT-99288	13,673,000.00	pp. 385-386
	Deed of Absolute Sale	Tax Declaration No. E-022-01483	330,000.00	pp. 381-382
2.Emiliano R. Caruncho	Deed of Absolute Sale	OCT No. 52768	7,166,500.00	pp. 418-420

[12] Joint Stipulation of Facts and Issues, Docket, p. 62.
[13] Vitug and Acosta, *Tax Law and Jurisprudence*, 3rd ed., 141.
[14] *Alcantara-Daus vs. De Leon, G.R. No. 149750, 16 June 2003.*
[15] *Ainza, et al. vs. Sps. Padua, G.R. No. 165420, June 30, 2005.*

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	Deed of Absolute Sale	OCT No. 5335	10,356,500.00	pp. 415-417
3.Felisa Bonifacio et al.	Deed of Absolute Sale	OCT No. 748	94,259,000.00	pp. 405-407
4.Sps. Jaime Sia and Nenita De Guzman	Deed of Absolute Sale	TCT Nos. PC-80450, PT-80451, PT-74548	31,086,000.00	pp. 387-389
5.Joselito Santana, *et al.*	Deed of Absolute Sale	Tax Declaration No. E-022-01480	1,567,500.00	pp. 412-414

The element of consideration is established by the following documents:[16]

Exhibits	Description	Docket Page
E	Traders Royal Bank Debit Memo (dated May 23, 1997) to petitioner, with entry "Amount of Manager's Check No. 1224B in favor of TRADER'S ROYAL BANK – Pasig Branch for the account of JAIME SIA plus amount of service charge collected."; in the amount of P2,020,603.50	284
E-1	Traders Royal Bank Debit Memo (dated May 21, 1997) to petitioner, with entry "xxx Amount of MC # 12232, 12233, 12234, 12235, 12236, 12237, 12248 purchased today"; in the amount of P8,278,001.00	285
E-2	Manager's Check No. 12235 dated May 21, 1997 issued to Traders Royal Bank-Pasig Branch for the account of Felisa Bonifacio; in the amount of P6,126,835.00	286
E-3	Manager's Check No. 12236 dated May 21, 1997 issued to Traders Royal Bank-Pasig Branch for the account of Emiliano Caruncho; in the amount of P465,825.00	286
E-4	Manager's Check No. 12235 dated May 21, 1997 issued to Traders Royal Bank-Pasig Branch for the account of Emiliano Caruncho; in the amount of P673,175.00	286
E-5	Manager's Check No. 12248 dated May 23, 1997 issued to Traders Royal Bank-Pasig Branch for the account of Jaime Sia; in the amount of P2,020,590.00	286
E-6	Manager's Check No. 12232 dated May 21, 1997 issued to Traders Royal Bank-Pasig Branch for the account of Edita Lim Chua; in the amount of P888,745.00	287
E-7	Manager's Check No. 12233 dated May 21, 1997 issued to Traders Royal Bank-Pasig Branch for the account of Edita Lim Chua; in the amount of P21,450.00	287
E-8	Manager's Check No. 12234 dated May 21, 1997 issued to Traders Royal Bank-Pasig Branch for the account of Joselito Santana; in the amount of P101,890.00	287

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[16] Exhibits "E-2" to "E-8".

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Also, a certain Leonora Cruz, Attorney-in-fact of sellers Chua, Caruncho, Bonifacio, Concepcion, and Santana, executed a letter acknowledging her receipt of the amount of P141,735,000.00 on March 21, 1997.[17]

As to the element of transfer, records show the following facts:

Exhibits	**Description**	**Docket Page**
P	Certificate Authorizing Registration (Real Property Transaction Subject to Capital Gains Tax) No. 998987 dated June 3, 1997, showing that Edita Lim Chua, et al., paid the amount of P683,650.00 and P205,095.00 as basic tax and documentary stamp tax, respectively, for the sale of real property covered by Tax Declaration No. 00970	311
Q	Documentary Stamp Tax Declaration (BIR Form No. 2000) with stamp date of June 2, 1997, showing that DST in the amount of P205,095.00 was declared and paid by Edita Lim Chua, *et al.*	313
S	Documentary Stamp Tax Declaration (BIR Form No. 2000) showing that DST in the amount of P155,350.00 was declared and paid by Emiliano and Aurora Caruncho on June 2, 1997	316
T	Certificate Authorizing Registration (Real Property Transaction Subject to Capital Gains Tax) No. 998442 dated June 9, 1997, showing that Emiliano R. Caruncho, paid the amount of P358,325.00, P10 and P107,500.00 as capital gains tax, cert. fee, and documentary stamp tax, respectively, for the sale of real property covered by Tax Declaration No. E-022-02271	317
U	Documentary Stamp Tax Declaration (BIR Form No. 2000) showing that DST in the amount of P107,500.00 was declared and paid by Emiliano and Aurora Caruncho on June 2, 1997	319
V	Capital Gains Tax Return/Application for Certificate Authorizing Registration showing that Sps. Emiliano and Aurora Caruncho paid the amount of P358,325.00 as Capital Gains Tax for the sale of real property covered by Tax Declaration No. E-022-02271 on June 2, 1997	321
W	Documentary Stamp Tax Declaration (BIR Form No. 2000) showing that DST in the amount of P1,413,885.00 was declared and paid by Felisa Bonifacio, *et al.* on June 2, 1997	322
X	Certificate Authorizing Registration (Real Property Transaction Subject to Capital Gains Tax) No. 998440 dated June 9, 1997, showing that Felisa Bonifacio, *et al.* paid the amount of P4,712,950.00, P10.00 and P1,413,885.00 as capital gains tax, cert. fee, and documentary stamp tax, respectively, for the sale of real property covered by Tax Declaration No. E-022-00979	323

[17] BIR Records, p. 425.

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Y	Certificate Authorizing Registration (Real Property Transaction Subject to Capital Gains Tax) No. 998439 dated June 9, 1997, showing that Sps. Jaime Sia and Nenita De Guzman paid the amount of P1,554,300.00, P10.00 and P466,290.00 as capital gains tax, cert. fee, and documentary stamp tax, respectively, for the sale of real property covered by TCT Nos. 80450, 80451, and 74548	325
Z	Documentary Stamp Tax Declaration (BIR Form No. 2000) showing that DST in the amount of P466,290.00 was declared and paid by Jaime and Nenita Sia on June 2, 1997	327

In addition, it was also established that petitioner bought from a certain Florinda V. Estrada a parcel of land in Cavite, covered by TCT No. T-630341, in the amount of P50,000,000.00.[18] Petitioner subsequently registered the subject property in its name and was issued TCT No. 649189.[19]

This Court finds that the above-mentioned transactions constitute as consummated sales subject to income tax and the corresponding payment of withholding tax.

Now, Section 50(b) of the National Internal Revenue Code of 1977 (Tax Code), as amended, provides:

> "SEC. 50. *Withholding of tax at source.*
>
> xxx xxx xxx
>
> (b) *Withholding of creditable tax at source.* – The Secretary of Finance may upon the recommendation of the Commissioner of Internal Revenue, require also the withholding of a tax on the items of income payable to persons (natural or juridical) residing in the Philippines by payor-corporation/persons as provided for by law at the rate of not less than 2½% but not more than 35% thereof which shall be credited against the income tax liability of the taxpayer for the taxable year."

There is no dispute that petitioner is not habitually engaged in real estate business. It is a wholly-owned subsidiary of Philippine Overseas Telecommunication Corporation and is engaged in the business of

[18] Exhibits "F" to "I".
[19] Exhibit "I".

telecommunications and other allied services.[20] Being so, Section 1(j)(4) of Revenue Regulations (RR) No. 6-85, as amended by RR 12-94, applies. It reads:

> "Sec. 1. *Income payments subject to creditable withholding tax and rates prescribed thereon.*- Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines.
>
> xxx xxx xxx
>
> (j) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of –
>
> xxx xxx xxx
>
> 4. Real property, other than capital asset, by an individual, estate, trust, trust fund or pension fund or real property whether held as capital or ordinary asset, by a corporation *not habitually engaged* in the real estate business – *seven and one-half percent (7.5%).*"

In the present case, there was a perfected contract of sale of the land located in Cavite. In fact, the Memorandum Report of the BIR Examiners[21] points out that a Transfer of Certificate of Title (TCT) had already been issued in the name of petitioner. Records show that TCT No. T-630341 in the name of the seller Florinda V. Estrada had already been cancelled and Transfer Certificate of Title No. 649189 had been issued in petitioner's name.

The title issued in the name of petitioner and the perfected Deed of Absolute Sale are the pieces of evidence that proved the unconditional transfer between the parties. This perfected and consummated transfer is the

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[20] BIR Records, p. 493.
[21] Exhibit "2".

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transaction subject to taxes. This factual finding of the examiners was not rebutted by petitioner.

Likewise, petitioner does not appear to dispute its liability for EWT arising from its sales transaction of the property located in Pasig City; as the proof of the consummated sale is found in the records. Accordingly, these transactions are subject to EWT.

In the case of ***Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corp.***[22], the Supreme Court explained the withholding tax system as follows:

> "In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer — he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him — he earned no income. **The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:**
>
> > '**the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer**.'
>
> xxx xxx xxx
>
> Codal provisions on withholding tax are mandatory and must be complied with by the withholding agent. The taxpayer

[22] *G.R. No. 108576, January 20, 1999.*

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> should not answer for the non-performance by the withholding agent of its legal duty to withhold unless there is collusion or bad faith. The former could not be deemed to have evaded the tax had the withholding agent performed its duty. xxx." (*Emphasis supplied*)

Petitioner is being assessed for deficiency expanded withholding tax as an agent for the government to ensure collection of taxes. Its liability to withhold and remit taxes is personal and direct. As agent, petitioner shall be made to answer for its failure to comply with the withholding tax provisions of the Tax Code, which was to deduct and withhold from the payees and to remit to the government the withholding tax due.

Here, the assessment against petitioner is for its failure to remit withholding taxes arising from its purchase of lots in Cavite and Pasig City. The BIR assessed petitioner precisely because it found that there was no payment of appropriate withholding taxes on the transfer. As regards petitioner's allegation that it has already paid the EWT on the property located in Pasig City, although by mistake remitted said payment as capital gains tax instead; the Court finds such contention untenable. As stated by the BIR examiners in the Memorandum Report[23], petitioner could not present the actual returns to prove its claim that it had mistakenly paid capital gains tax, instead of EWT, in the amount of P10,298,510.00. Also, nowhere in the records did it show that petitioner presented the returns and the receipt as proof of payment. Accordingly, petitioner was correctly assessed for deficiency EWT.

Anent the issue of prescription, Section 203 of the Tax Code provides: Ge

[23] *Supra.*

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> "SEC. 203. *Period of Limitation Upon Assessment and Collection.-* Except as provided in the succeeding section, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Pursuant to Section 51 of the Tax Code and Section 5 of RR 6-85,[24] petitioner is required to file monthly return and pay the taxes withheld within ten (10) days after the end of each month.

A scrutiny of the following documents establishes the fact that only the capital gains and documentary stamp taxes were paid:

Seller		**CGT**		**Cert. Fee**
1. Edita Lim Chua	Certificate Authorizing Registration (Real Property Transaction Subj. to CGT) No. 998987, dated 06-03-07 (Exhibit "P") Documentary Stamp Tax Declaration (Exhibit "Q")	683,650.00	205,095.00	
2. Emiliano R. Caruncho	Certificate Authorizing Registration (Real Property Transaction Subj. to CGT) No. 998441, dated 06-09-07 (Exhibit "R") Documentary Stamp Tax Declaration (Exhibit "S")	517,825.00	155,350.00	10.00
3. Emiliano R. Caruncho	Certificate Authorizing Registration (Real Property Transaction Subj. to CGT) No. 998442, dated 06-09-07 (Exhibit "T") Documentary Stamp Tax Declaration (Exhibit "U") Capital Gains Tax Return for Certificate Authorizing Registration (Exhibit "V")	358,325.00	107,500.00	10.00
3. Felisa Bonifacio et al.	Certificate Authorizing Registration (Real Property Transaction Subj. to CGT) No. 998440, dated 06-09-07 (Exhibit "X") Documentary Stamp Tax Declaration (Exhibit "W")	4,712,950.00	1,413,885.00	10.00

[24] "Revised and Consolidated Expanded Withholding Tax Regulations."

4. Sps. Jaime Sia and Nenita De Guzman	Certificate Authorizing Registration (Real Property Transaction Subj. to CGT) No. 998439, dated 06-09-07 (Exhibit "V") Documentary Stamp Tax Declaration (Exhibit "Z")	1,554,300.00	466,290.00	10.00

Now, Section 223(a) of the Tax Code provides that in case of *false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission.* As there were no withholding of taxes and/or declaration in the monthly returns filed with the BIR and considering that the present judicial action was filed on April 30, 2004, respondent's right to assess and to collect has not prescribed.

Worthy of emphasis is the long settled rule that the taxpayer has the duty of proving the assessment to be erroneous. Tax assessments are presumed correct and made in good faith in the absence of evidence contrariwise.[25]

WHEREFORE, this instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner is **ORDERED TO PAY** deficiency expanded withholding tax, computed as follows:

Deficiency Expanded Withholding Tax	
Acquisition of Land	238,438,500.00
Multiply by Rate	7.5%
Creditable W/H Tax Due	17,882,887.50
EWT Remitted	-
Basic W/H Tax Due	17,882,887.50
Add: Increments -	
Interest (1/26/1998 to 4/15/2002)	15,090,217.40
Amount due and collectible	32,973,104.90

[25] *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc. and the Court of Tax Appeals, G.R. No. L-68230, November 25, 1986.*

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The compromise penalty in the amount of P25,000.00 is hereby **CANCELLED** in the absence of a mutual agreement by the parties.[26] In addition, petitioner is **ORDERED TO PAY** a 20% delinquency interest computed from April 30, 2004 until full payment, pursuant to Section 249 of the Tax Code.[27]

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

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

[26] *Rightfield Property Ventures, Inc. (now known as Universal Rightfield Property Holdings, Inc.) vs. Commissioner of Internal Revenue*, CTA Case No. 5972, October 16, 2003.
[27] BIR Records, p. 244.

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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.

ERNESTO D. ACOSTA
Presiding Justice

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