REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

EN BANC

PHILIPPINE NATIONAL BANK,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 762
(CTA Case Nos. 7355 & 7588)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

SEP 12 2012 ReApolinario 1:30 p.m.

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DECISION

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* by way of a *Petition for Review*[1] filed on May 11, 2011 by petitioner Philippine National Bank (PNB), pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503,[2] are the April 5, 2011 *Resolution*[3] and July 12, 2010 *Decision*[4] promulgated by

[1] *Rollo*, pp. 10-37.
[2] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes."

the Special First Division of this Court in CTA Case Nos. 7355 & 7588 entitled *"Philippine National Bank vs. Commissioner of Internal Revenue"*. The dispositive portions of the assailed *Resolution* and *Decision* read:

Resolution dated April 5, 2011:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration (With Prayer to Admit Attached Income Tax Return)** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

Decision dated July 12, 2010:

> "**WHEREFORE**, in view of the foregoing, the Petition for Review in CTA Case No. 7355 is hereby **DENIED** for insufficiency of evidence, while CTA Case No. 7588 is hereby **GRANTED**. Accordingly, respondent is **ORDERED** to refund petitioner the amount of P77,172,555.28, representing its claim for refund of interests, surcharges and penalties on Capital Gains Tax and Documentary Stamp Tax for the year 2003.
>
> **SO ORDERED.**"

Petitioner prays of this Court to reverse and set aside the assailed *Resolution* dated April 5, 2011 and to amend the July 12, 2010 *Decision* in CTA Case No. 7355 and order the respondent Commissioner of the Bureau of Internal Revenue (BIR) to refund in favor of petitioner PNB the additional amount of P12,400,004.70, representing the excess creditable taxes withheld and paid for the year 2003.

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[3] *Rollo*, pp. 38-42.
[4] *Rollo*, pp. 43-60.

THE FACTS

The facts, as succinctly narrated by the Special First Division are reproduced hereunder:

"The instant Petitions for Review are consolidated cases claiming for refund of excess withholding tax in the amount of P12,400,004.70 and surcharges, interests, and penalties in the amount of P77,172,555.28, both claimed to be erroneously paid by the petitioner.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at the PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue who is vested with authority to administer and enforce national internal revenue laws, including, inter alia, the power to grant claims for refund of any internal revenue taxes erroneously or excessively paid, assessed or collected.

CTA CASE NO. 7355

On April 7, 1995, Gotesco Tyan Ming Development, Inc. (GOTESCO) entered into a loan agreement 3 with several banks, i.e., herein petitioner, Metropolitan Bank and Trust Company, United Coconut Planters Bank, and Citytrust (now Bank of the Philippine Islands), for the amount of P800,000,000.00. The loan was secured by a Mortgage Trust Indenture Agreement (MTIA) in favor of petitioner through its Trust Banking Group as Trustee. The property used as security is a six-hectare commercial center known as Ever Ortigas Commercial Complex located in Ortigas Avenue, Pasig City and covered by Certificate of Title No. PT-97306.

Allegedly, GOTESCO defaulted on its loan obligations that on July 30, 1999 petitioner foreclosed the mortgaged property through a notarial foreclosure sale. On August 4, 1999, a Certificate of Sale was issued in favor of petitioner subject to the right of GOTESCO to redeem the mortgaged property within one year from the date of inscription of the Certificate of Sale with the Register of Deeds of Pasig City or on November 9, 1999.

On October 20, 2000, prior to the expiration of the one-year redemption period, GOTESCO filed a civil case against petitioner at the Regional Trial Court of Pasig City, Branch 168 (RTC) docketed as Civil Case No. 68139, for the annulment of foreclosure proceedings, specific performance and damages with prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction. On November 9, 2000, the RTC issued a TRO preventing the consolidation of ownership of the mortgaged property. On December 21, 2000, the RTC issued a Writ of Preliminary Injunction.

Petitioner filed a Motion for Reconsideration dated December 21, 2000 which was subsequently denied by the RTC. On July 6, 2001, petitioner went to the Court of Appeals via a Petition for Certiorari. The Court of Appeals ruled in favor of petitioner by issuing an order, reversing and setting aside the Writ of Preliminary Injunction issued by the RTC. On August 27, 2003, GOTESCO filed a Motion for Reconsideration which the Court of Appeals denied in its Resolution dated December 22, 2003.

In preparation for the consolidation of its ownership over the Mortgaged Property, petitioner paid the Documentary Stamp Taxes in the amount of P18,615,000.00 on October 31, 2003. It also withheld and remitted to the BIR, on October 31, 2003 and November 11, 2003, the creditable withholding tax equivalent to six percent (6%) of the bid price of P1,240,000,469.82, or P74,400,028.49 pursuant to Section 2.57.2 (J) (C) of Revenue Regulations No. 2-98 as amended by Revenue Regulations No. 6-01. 10

Nonetheless, of the amount remitted to the BIR, petitioner now claims that it erroneously withheld 6% when the rate applicable should have been 5% for the sale of real property classified as ordinary assets, where the transferors are habitually engaged in real estate leasing pursuant to Section 2.57.2 (J) (B) of Revenue Regulations No. 2 98 as amended by Revenue Regulations No. 6-01. Considering this incident, the excess payment of the tax to the BIR amounted to P12,400,004.70.

<u>CTA CASE NO. 7588</u>

Petitioner alleges that, pursuant to consolidating its ownership over the mortgaged property and processing of the Certificate Authorizing Registration (CAR), it filed the Withholding Tax Returns and Documentary

Stamp Tax Returns with the respondent on October 31, 2003 and November 12, 2003. On even dates, petitioner paid the taxes due on said returns. However, pending the issuance of the CAR, the BIR informed petitioner that it is imposing interests, penalties and surcharges of P61,678,490.28 on Capital Gains Tax and P15,494,065.00 on Documentary Stamp Tax. In order to facilitate the release of the CAR, petitioner paid all the surcharges, interests, and penalties against it in the total amount of P77,172,555.28 on April 1, 2005.

On October 27, 2005, petitioner filed its administrative claim for the refund of excess creditable withholding tax. On October 28, 2005, it filed its Petition for Review before this Court docketed as CTA Case No. 7355.

Pre-trial ensued and after the submission of Joint Stipulation of Facts and Issues, the Court admitted the same and terminated the Pre-trial proceedings on March 10, 2006.

After several hearings, on November 30, 2006, counsel for the petitioner manifested that it will file its Formal Offer of Evidence within thirty (30) days from December 14, 2006 or until January 13, 2007. However, on December 28, 2006, petitioner filed an "Urgent Motion to (1) Defer filing of Formal Offer of Exhibits, (2) Set case for hearing for presentation of testimony of witnesses, and (3) Issue Subpoena Duces Tecum and Ad Testificandum" which was granted on January 29, 2007.

Upon presentation of additional evidence, petitioner committed to file its Formal Offer of Evidence within thirty (30) days from March 13, 2007.

On March 22, 2007, petitioner filed with the respondent a claim for refund claiming erroneous assessment and payment of the surcharges, penalties and interests. Petitioner filed its corresponding Petition for Review on March 30, 2007, docketed as CTA Case No. 7588.

On April 11, 2007, petitioner filed an Urgent Motion to Consolidate Cases (CTA Case Nos. 7355 and 7588) which was granted on May 9, 2007 via a Resolution. The consolidated cases were set for pre-trial conference. However, despite several resetting, respondent failed to make an appearance. Thus, on September 21, 2007, respondent was declared to be in default.

On October 17, 2007, respondent filed a Motion for Reconsideration on the declaration of default. On October 26, 2007, petitioner filed its Opposition (To the Motion for Reconsideration of Resolution dated 28 September 2007). Respondent filed its Reply (To Petitioner's Opposition dated October 24, 2007) on November 7, 2007. Respondent's Motion for Reconsideration was denied on December 18, 2007.

After several hearings, petitioner filed its Formal Offer of Evidence on August 15, 2008 for the consolidated cases. Respondent filed a Comment (To Petitioner's Formal Offer of Evidence) on August 29, 2008. The Court resolved petitioner's Formal Offer of Evidence on September 29, 2008.

On September 23, 2008, petitioner filed an "Urgent Motion to Reopen Trial To Allow Petitioner to Present Additional Evidence with Omnibus Motion to 1) Defer Resolution on Petitioner's Formal Offer of Evidence and 2) To allow Petitioner to file Amended Formal Offer of Evidence after completion of additional trial. Considering the resolution of petitioner's Formal Offer of Evidence, on October 15, 2008, the Court granted petitioner's prayer to reopen trial and submit supplemental FOE.

Respondent filed a Motion for Reconsideration on October 20, 2008 on the Resolution dated September 29, 2008 alleging that the admitted documents should have been denied by the Court. Petitioner opposed said Motion on November 10, 2008 via an Opposition to Respondent's Motion for Reconsideration. On February 17, 2009, the Court issued a Resolution denying the Motion for Reconsideration considering that respondent was already declared in default.

On June 4, 2009, petitioner filed a Supplement to Formal Offer of Evidence which this Court resolved on June 22, 2009 by admitting additional documentary exhibits. Upon submission of the petitioner's Memorandum on August 25, 2009, the consolidated cases were submitted for decision on August 27, 2009.

In CTA Case No. 7355, the jointly admitted issues of the parties are as follows:

1. Whether or not the administrative and judicial claims for tax refund of petitioner were filed within the two-year statutory period;
2. Whether or not petitioner remitted to the BIR the alleged 6% creditable withholding tax on October 31, 2003 and November 12, 2003 in the total amount of P74,400,028.19;
3. Assuming the same amount was remitted to the BIR, whether or not the same was made pursuant to the provision of existing laws and regulations;
4. Whether or not the alleged real properties subjected to the withholding tax are considered ordinary assets of the seller/transferor;
5. Whether the seller or transferor is habitually engaged in the real estate business;
6. Whether or not the proper withholding tax rate is 5% as alleged by petitioner;
7. Assuming that the proper withholding tax rate is only 5%, whether petitioner is the proper party that may ask for a refund;
8. Whether or not the ruling in the case of Procter and Gamble (Proctor (sic) and Gamble Philippines v. Commissioner of Internal Revenue, G.R. No. 66838 dated 02 December 1991) as alleged by the petitioner is applicable in the instant case;
9. Whether or not petitioner is entitled to a refund in the amount of P12,400,004.70 allegedly representing year 2003 erroneously paid taxes;
10. Whether the fact of withholding is established by copies of statements duly issued showing the amount paid of tax withheld therefrom;
11. Whether or not the application of the six percent (6%) rate of withholding on the transfer or conveyance of the real properties considered as ordinary assets of the seller considered as habitually engaged in business is erroneous.

In CTA Case No. 7588, petitioner presented the following issues in its Pre-Trial Brief:

1. Whether or not petitioner was legally prevented from paying the taxes by virtue or the Writ of Preliminary Injunction issued by the Regional Trial Court in the Annulment of Foreclosure case; and
2. Whether or not petitioner was delayed in the payment of creditable withholding tax and documentary stamp tax, which delay may warrant the imposition of charges, interests and penalties in the amount of P77,172,555.28."

The Special First Division, in its *Decision*[5] dated July 12, 2010, denied for insufficiency of evidence the Petition for Review in CTA Case No. 7355 seeking the refund in the amount of P12,400,004.70 allegedly representing petitioner's excess creditable withholding tax claimed to have been erroneously paid by the petitioner. On the other hand, the Special First Division granted CTA Case No. 7588 and ordered the respondent to refund petitioner the amount of P77,172,555.28, representing its claim for refund of interests, surcharges and penalties on Capital Gains Tax and Documentary Stamp Tax for the year 2003.

The Motion for Partial Reconsideration (With Prayer to Admit Attached Income Tax Return) filed by petitioner was denied for lack of merit in a *Resolution*[6] dated April 5, 2011.

Aggrieved, petitioner filed the subject *Petition for Review*[7].

Without necessarily giving due course to the instant *Petition*, the respondent was ordered to file her comment within ten (10) days from receipt of the Resolution

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[5] *Supra*, Note 4.
[6] *Supra*, Note 3.
[7] *Supra*, Note 1.

dated June 1, 2011. Record shows that respondent failed to file her comment within the period granted, thus, considering the issues raised in the subject *Petition for Review*[8], this Court resolved to give due course to the *Petition* and ordered the parties to submit their respective memoranda[9].

Petitioner filed its *Memorandum*[10] on October 21, 2011, while respondent failed to file her memorandum within the period prescribed; hence, the above-captioned case was submitted for decision on November 15, 2011.

<u>THE ISSUE/S</u>

WHETHER OR NOT PETITIONER HAS PRESENTED SUFFICIENT EVIDENCE TO PROVE THAT IT IS ENTITLED TO THE REFUND OF THE EXCESS PAYMENT OF THE PHP 12,400,004.71, WHICH FORMS PART OF THE PHP 74,400,028.49 WITHHOLDING TAXES ERRONEOUSLY PAID.

Arguments of Petitioner[11]

Petitioner submits that the Court in Division erred when it denied petitioner's Motion for Partial Reconsideration, anchoring its position on the following main arguments, *viz*:

A. that GOTLSCO's Php6,014,433.00 worth of tax credits (i.e., creditable taxes withheld), as reported and claimed in its year 2003 income tax return did not include the amount of Php74,400,028.49 equivalent to 6% creditable tax withheld by petitioner.

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[8] *Supra*, Note 1.
[9] *Rollo*, pp. 69-70.
[10] *Rollo*, pp. 77-104.
[11] *Rollo*, pp. 91-101.

B. that the 12 July 2010 *Decision*[12] expressly provided that the 2003 income tax return of GOTESCO is the only evidence needed to show that the excess withholding taxes paid and remitted to the BIR were not utilized.

In support of the first main argument, petitioner points out that [i] GOTESCO continues to recognize the foreclosed property as its own asset as shown in its Audited Financial Statements for the year 2003, marked as Exhibit "H". Thus, it does not recognize the foreclosure sale conducted by petitioner, and has not claimed the corresponding Php74,400,028.49 creditable withholding taxes withheld by petitioner on the foreclosure sale; [ii] GOTESCO testified that the Php6,014,433.00 tax credits claimed by GOTESCO in the year 2003 does not include the Php74,400,028.49 withholding taxes withheld and paid by petitioner in the year 2003; and [iii] Petitioner presented BIR Form No. 1606, the withholding tax remittance return filed by petitioner as withholding agent, which clearly shows that the amount of Php74,400,028.49 was withheld and paid upon petitioner's foreclosure of GOTESCO's asset.

Anent the second main argument, petitioner is of the view that the insufficiency of evidence, as declared in the dispositive portion of the 12 July 2010 Decision, relates to the finding by the Special First Division that GOTESCO's 2003 income tax return (ITR) was not submitted; and that it was precisely because of this that petitioner presented among others, GOTESCO's 2003 tentative and amended ITR, with full reliance on the 12 July 2010 Decision that doing so would already

[12] *Supra*, Note 4.

convince this Court that indeed, the excess withholding tax payments were not used by Gotesco.

THE RULING OF THE COURT *EN BANC*

After a fastidious examination of the issue, arguments of petitioner, rules and jurisprudence applicable to this case, *We* are convinced that the ruling of the Court *a quo* denying the Petition for Review in CTA Case No. 7355 for insufficiency of evidence – effectively disallowing petitioner PNB's claim refund of the additional amount of P12,400,004.70, allegedly representing the excess creditable taxes withheld and paid for the year 2003 – is fully justified in law and in reason.

The discussion in the challenged *Resolution*[13] was concise, but it was no less fully satiated with a clear-cut explanation of the rationale behind the denial of the claim, *viz*:

> "After a careful study of the arguments proffered by the petitioner in its Motion for Partial Reconsideration, as well as a thorough examination of the documentary and testamentary evidence that it submitted, this Court finds that the petitioner still was not able to clearly establish its right to the refund of the excess creditable tax withheld on behalf of GOTESCO.
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> In the case of Far East Asia Bank and Trust Company vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, the Supreme Court held that in order to successfully process a claim for tax refund, a taxpayer must declare the payments, from which taxes were withheld, as part of his gross income and clearly establish the fact of withholding of the taxes sought to be refunded.
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> The Supreme Court further held that there are requisites for the grant of a claim for refund of creditable withholding tax. In the case of Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, the Court held that:

[13] *Supra*, Note 3.

> "There are three conditions for the grant of a claim for refund of creditable withholding tax: 1) the claim is filed with the CIR within the two-year period from the date of payment of the tax; 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and, 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom. The third condition is specifically imposed under Section 10 of Revenue Regulation No. 6-85 (as amended), thus:
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> Sec. 10. Claim for tax credit or refund. — (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom . . . . (Emphasis supplied)"

In our decision dated July 12, 2010, this Court held that petitioner was able to sufficiently establish the fact of withholding and the payment of withholding tax. However, since petitioner is claiming the refund of the excess creditable taxes it withheld from GOTESCO, it is necessary to prove that GOTESCO did not use the said excess tax payments to pay for its liabilities. In the aforementioned decision, it was noted that petitioner failed to present evidence to prove that GOTESCO did not utilize the taxes withheld to settle its tax liabilities, thus petitioner's claim for refund was denied for insufficiency of evidence.

Petitioner attached to its Motion, income tax returns of GOTESCO for the taxable year 2003, to prove that the latter did not utilize the taxes withheld by petitioner. **The returns were submitted without any attachment regarding its creditable taxes withheld. Except for GOTESCO's Unadjusted Schedule of Prepaid Tax for the taxable year 2003, there were**

no other documents or schedules presented before this Court to support the figures reported in the tax returns of GOTESCO for the same year under Lines 27 (C), (D) and (G) or the Creditable Taxes Withheld.

We note that the amounts reported by GOTESCO as creditable taxes withheld for the year 2003 were just P6,014,433.00 in total, which is less than P74,400,028.49, the creditable taxes withheld from it by the petitioner. In fact, it is less than the P12,400,004.70 excess creditable taxes withheld being claimed by petitioner in its present motion. However, this Court deemed that such observation alone, without any supporting document or schedule, is not enough to convince us that no part of the creditable withholding tax sought to be refunded is included in the total tax credits reported by GOTESCO in its tax returns for the taxable year 2003 which was used, in part, for the settlement of its tax liabilities for the same year.

To sufficiently prove that GOTESCO did not utilize the creditable taxes it withheld, petitioner should have likewise presented the **BIR Forms No. 2307 issued to GOTESCO in relation to the creditable taxes withheld reported in its 2003 tax returns.** Doing so will dispel any doubt as to the composition of GOTESCO's creditable taxes withheld for 2003. This will settle once and for all that the amount being claimed by petitioner was not utilized by GOTESCO, and thus the claim should be granted. Until then, this Court will stand by its decision and deny the claim." (Emphasis supplied)

Verily, no substantial matters or issues have been raised in the subject *Petition for Review*[14], a careful reading of the challenged *Resolution*[15] reveals that the arguments relied upon by petitioner in the instant *Petition* have been satisfactorily and justifiably discussed and passed upon in the aforesaid *Resolution* sought to be reconsidered.

In this case, petitioner is counting on the **Income Tax Returns** of GOTESCO for the taxable year 2003 and on a certain **Unadjusted Schedule of Prepaid Tax** for

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[14] *Supra*, Note 1.
[15] *Supra*, Note 3.

the same year to support its argument that GOTESCO did not utilize the taxes withheld by petitioner; however, *We* are not persuaded.

To reiterate, since the claim for refund involves creditable taxes withheld from GOTESCO, it is necessary to prove that these creditable taxes were not utilized by GOTESCO to pay for its liabilities. The income tax returns alone are not enough to fully support petitioner's contention that no part of the creditable withholding tax sought to be refunded by petitioner was utilized by GOTESCO; *first,* there were no other relevant supporting documents or schedules presented to delineate the figures constituting the creditable taxes withheld that was reported in GOTESCO's 2003 tax returns; and *second*, this Court cannot give credence to the Unadjusted Schedule of Prepaid Tax for the taxable year 2003 being referred to by petitioner as the same pertains merely to a list of GOTESCO'S creditable tax withheld for taxable year 2003 and was not accompanied by any attachment to support its contents; also it is manifest from the records that petitioner failed to have this Schedule of Prepaid Tax offered in evidence[16], and thus, was not admitted as part of the records of this case[17].

It bears to stress that "tax refunds are in the nature of tax exemptions. Laws granting exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Where the taxpayer claims a refund, the CTA as a court of record is required to conduct a formal trial (trial de novo) to prove every minute aspect of the claim."[18]

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[16] *Division Docket*, pp. 840 843.
[17] *Division Docket*, pp. 864 865.
[18] *Kepco Phil. Corp. vs. Commissioner of Internal Revenue*, G.R. No. 179356, December 14, 2009 citing Philippine Phosphate Fertilizer v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005,

In view of the foregoing, the Court has no option but to deny petitioner PNB's claim for refund of the additional amount of P12,400,004.70, allegedly representing the excess creditable taxes withheld and paid for the year 2003.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the assailed April 5, 2011 *Resolution*[19] and July 12, 2010 *Decision*[20] promulgated by the Special First Division of this Court in CTA Case Nos. 7355 & 7588 are hereby **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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461 SCRA 369, 381. *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571, 588-589.
[19] *Rollo*, pp. 38-42.
[20] *Rollo*, pp. 43-60.

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
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 with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice