**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

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| **PHILIPPINE PHARMA PROCUREMENT, INC. (formerly: PITC PHARMA, INC.),** Petitioner, | **CTA CASE NO. 9734** |
| | Members: |
| | **CASTAÑEDA, JR.,** *Chairperson, and* **MINDARO-GRULLA,** *JJ.* |
| - versus - | |
| **BUREAU OF INTERNAL REVENUE, represented by COMMISSIONER CAESAR R. DULAY,** Respondent. | Promulgated: |
| | MAR 07 2019 9:50 a.m. |

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# RESOLUTION

For the Court's resolution is respondent's **Motion to Dismiss**, filed through registered mail on November 6, 2018, and received by the Court on November 14, 2018, with petitioner's **Opposition (to the Motion to Dismiss)**, filed on January 11, 2019.

Respondent claims that the Petition for Review is not appealable to the Court of Tax Appeals (CTA). He emphasizes that this Court is a court of special jurisdiction and can only take cognizance of such matters, as are clearly within its jurisdiction. Respondent also asserts that since the petition involves two government entities, the applicable law is Presidential Decree (PD) No. 242[1], citing the case of *Power Sector Assets and Liabilities*

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[1] PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES.

*Management Corporation vs. Commissioner of Internal Revenue*,[2] depriving this Court of jurisdiction to hear and decide the case.

On the other hand, petitioner argues that the *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue* case does not apply since the factual circumstances that gave rise to that case do not exist in connection with petitioner's petition. It further alleges that Republic Act (RA) 9282[3] and RA 9503[4] are later laws that effectively established the legislative intent to retain the CTA's exclusive appellate jurisdiction even if the party involved is a government agency. It also contends that policy considerations weigh heavily in favor of the specialized expertise of CTA.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[5]

It should be recalled that the CTA is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[6] Its jurisdiction is expressly laid down in RA No. 1125, as amended by RA No. 9282 and RA 9503.

Section 7(a)(1) and (2) of R.A. No. 1125, as amended, states that the CTA shall exercise exclusive appellate jurisdiction to review

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[2] G.R. No. 198146, August 8, 2017.

[3] 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[4] AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[5] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

[6] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing Inc.)*, G.R. No. 169778, March 12, 2014.

by appeal decisions of and inaction by the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue (BIR).

On the other hand, Sections 1 to 3 of PD No. 242 provide:

> "**Section 1.** Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.
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> **Section 2.** In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice, as Attorney General and ex officio legal adviser of all government-owned or controlled corporations and entities, in consonance with section 83 of the Revised Administrative Code. His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.
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> **Section 3.** Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:
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> > (a) The Solicitor General, with respect to disputes or claims controversies between or among the departments, bureaus, offices and other agencies of the National Government;
> >
> > (b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served

> by the Office of the Government Corporate Counsel; and
>
> (c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b)."

From the foregoing, it is clear that the provisions of PD No. 242, which took effect on July 9, 1973, apply to all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements. And the jurisdiction over the said disputes are either vested in the Solicitor General, the Government Corporate Counsel or the Secretary of Justice, as provided under Sections 67 and 68, Chapter 14, Book IV of Executive Order No. 292, otherwise known as the "Administrative Code of 1987".[7]

Moreover, in the case of *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*[8], the Supreme Court ruled that:

> "The primary issue in this case is whether the DOJ Secretary has jurisdiction over OSJ Case No. 2007-3 which involves the resolution of whether the sale of the Pantabangan-Masiway Plant and Magat Plant is subject to VAT.
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> We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists.
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> However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute

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[7] *Commissioner of Internal Revenue vs. Power Sector Assets and Liabilities Management Corporation* and *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 1618 (CTA Case No. 8587) and CTA EB No. 1619 (CTA Case No. 8587), October 1, 2018.

[8] *Supra* Note 2.

between PSALM and NPC, which are both wholly government-owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants. There is no question that original jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved**. As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction.

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The use of the word 'shall' in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word 'shall' means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PO 242, it is mandatory that disputes and claims 'solely' between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.

The law is clear and covers '***all disputes, claims and controversies solely*** **between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements**.' When the law says 'all disputes, claims and controversies solely' among

> government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.
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> The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts**. xxx
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> PD 242 is only applicable to disputes, claims, and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations." (*Emphases supplied*)

Records show that petitioner is a government-owned and controlled corporation, 60% owned by the Philippine International Trading Corporation (PITC) and 40% owned by the National Development Company (NDC). Its primary mandate is to be the lead coordinating agency to make quality medicines available, affordable and accessible to the greater masses of Filipinos.[9]

Based on the foregoing provisions of laws and the recent pronouncement by the Supreme Court, it is plain that the instant case between petitioner Philippine Pharma Procurement, Inc. (formerly PITC Pharma, Inc.), a government-owned and controlled corporation, and the BIR, a government bureau, involving the disputed petitioner's alleged deficiency income tax assessment, is within the jurisdiction of the Secretary of Justice. Therefore, the Court is bereft of jurisdiction to take cognizance of the present case.

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[9] Paragraph (Par.) 2, Parties, Petition for Review, docket, p.11; admitted in Respondent's Answer filed by registered mail on March 8, 2018, docket, p. 215; Petition for Review, Annex A, docket, p. 30.

**WHEREFORE**, premises considered, respondent's **Motion to Dismiss** is **GRANTED**.

**SO ORDERED**.

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

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