REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PNOC EXPLORATION CORPORATION, Petitioner,	CTA CASE NO. 9373
	Members:
- versus -	DEL ROSARIO, *P.J., Chairperson,* FABON-VICTORINO, *and* MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 23 2020 10:43a

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RESOLUTION

On February 7, 2019, the Court issued a Resolution directing petitioner to show cause within fifteen (15) days from notice, why its case should not be dismissed and/or referred to the Secretary of Justice for adjudication.

In issuing the above directive, the Court considered the recent pronouncement of the Supreme Court in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*[1] (*PSALM case*), where the Supreme Court categorically declared that **in disputes and claims solely between government agencies and offices, including Government Owned and Controlled Corporations (GOCCs), the administrative procedure prescribed in Presidential Decree (PD) No. 242, should be followed**.

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

On March 1, 2019, petitioner, in compliance with the Court's directive, filed through registered mail its *Position Paper*, submitting that the Court has jurisdiction and continues to have jurisdiction over the instant case.

In asserting its position, petitioner argues that in so far as the *PSALM case* is concerned, the filing of a petition for the settlement of claims before the Department of Justice (DOJ), pursuant to PD No. 242, in relation to Sections 66 to 71, Chapter 14, Book IV of the 1987 Administrative Code, was an original action and not an appeal from a Bureau of Internal Revenue (BIR) assessment. According to petitioner, the recourse before the DOJ was an arbitration proceeding agreed by PSALM, National Power Corporation (NPC) and the BIR pursuant to August 30, 2010 Memorandum of Agreement (MOA) they executed to refer their respective claims before the DOJ. Thus, the facts in the *PSALM case* justified the filing of the petition for the settlement of the claim between the BIR and PSALM before the DOJ.

Petitioner likewise asserts that Section 7 of Republic Act (RA) No. 1125, as amended, provides that the Court of Tax appeals (CTA) has the exclusive appellate jurisdiction to review by appeal the "decision of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other law or part of law administered by the BIR." Thus, consistent with Section 11 of RA No. 1125, as amended, and the prevailing interpretation on CTA's exclusive appellate jurisdiction, petitioner filed the instant case with the CTA. It added that the advent of a later ruling is beyond its control, thus, the same should not be taken against it, especially when the circumstances of the case are different or based on facts distinct from those in the *PSALM case*.

Petitioner also stresses that the *PSALM case* is an original action wherein the DOJ was asked to settle PSALM's claim against the BIR while the present case is an appeal from the CIR's decision. The *PSALM case* also involves a pure question of law. It did not challenge the mathematical computation of Value-Added Tax (VAT) deficiency but rather the application of VAT over the proceeds of the sale to private entities pursuant to its mandate. On the other hand, this case involves disputes not only on questions of law but also includes a protest on several grounds including the amount of alleged deficiency tax.

Finally, petitioner submits that the CTA still has jurisdiction over the instant case filed at the time the ruling in the *PSALM case* was yet to be promulgated. Besides, many cases involving tax disputes between the BIR and other government offices, including GOCCs, that had been decided by the Supreme Court or are still pending therein had been appealed with the CTA. For petitioner, to dismiss this case and other tax cases pending before the Court where the petitioners are government offices, agencies, and instrumentalities, including GOCCs will be prejudicial to the interest of these offices, which relied on the prevailing interpretation on the exclusive appellate jurisdiction of the CTA over tax cases.

Petitioner's *Position Paper* failed to convince; hence, the instant *Petition for Review* must be dismissed.

Sections 66, 67, and 68, Chapter 14, Book IV of Executive Order (EO) No. 292, otherwise known as the Administrative Code of 1987, provides as follows:

> SEC. 66. *How Settled.* — **All 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, such as those arising from the interpretation and application of statutes**, contracts or agreements, **shall be administratively settled or adjudicated in the manner provided in this Chapter**. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

> SEC. 67. *Disputes Involving Questions of Law.* — **All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice** as Attorney-General of the National Government and as ex officio legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.
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> SEC. 68. *Disputes Involving Questions of Fact and Law.* — **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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> > (1) **The Solicitor General**, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and
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> > (2) **The Secretary of Justice, in all other cases not falling under paragraph (1)**. (Emphases supplied)

Clear from the foregoing provisions that all 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, such as those arising from the interpretation and application of statutes, shall be administratively settled or adjudicated, by the Secretary of Justice or the Solicitor General, depending on the question involved therein, and whether the latter officer is the principal law officer or general counsel of the government offices involved, as the case may be.

Interpreting the above-quoted provisions of EO No. 292 and its predecessor, PD No. 242, which has substantially the same provisions, the Supreme Court, in *PSALM case*, made the following pronouncements:

> "x x x 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 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. **<u>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</u>, or the Government Corporate Counsel, <u>depending on the issues and government agencies involved</u>**. As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. Sections 1, 2, and 3 of PD 242 read:
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>> 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.

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 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.

Section 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(a) The Solicitor General, with respect to disputes or claims [or] 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).

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 PD 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.

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**. Since this case is a dispute between PSALM and NPC, both government-owned and controlled corporations, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case. In fact, the MOA executed by the BIR, NPC, and PSALM explicitly provides that '[a] ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM.' Such provision indicates that the BIR and petitioner PSALM and the NPC acknowledged that the Secretary of Justice indeed has jurisdiction to resolve their dispute.

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To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards **private entities and the BIR**, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are **all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.

> Furthermore, it should be noted that the 1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges. **On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities.** x x x
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> **Thus, even if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to intra-governmental disputes.** PD 242 is a special law while the 1997 NIRC is a general law, insofar as disputes solely between or among government agencies are concerned. Necessarily, such disputes must be resolved under PD 242 and not under the NIRC, precisely because PD 242 specifically mandates the settlement of such disputes in accordance with PD 242. PD 242 is a valid law prescribing the procedure for administrative settlement or adjudication of disputes among government offices, agencies, and instrumentalities under the executive control and supervision of the President.
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> PD 242 is now embodied in Chapter 14, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987, which took effect on 24 November 1989. (*Boldfacing and underscoring supplied*)

It is without a doubt that under Presidential Decree (PD) No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987), all disputes and claims solely between government agencies and offices, including GOCCs, shall be administratively settled or adjudicated by the SOJ, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved. The Supreme Court further held that when the law says *'all disputes, claims and controversies solely'* among government agencies, **the law means all, without exception**. The Supreme Court, however, emphasized that **PD No. 242 will only apply when all the parties involved are purely government offices and/or GOCCs**.

The Supreme Court likewise noted the conflicting provisions of NIRC of 1997 with PD No. 242. PD No. 242 provides that all disputes and claims solely between government agencies and offices, including GOCCs are within the jurisdiction of the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, as the case may be. On the other hand, Section 4 of the NIRC of 1997, as amended, provides that the CTA has exclusive appellate jurisdiction as regards CIR's decision on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC.

To harmonize these laws, the Supreme Court adopted the following interpretation in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR:

1. As regards private entities and the BIR, the decision of petitioner is subject to the exclusive appellate jurisdiction of this Court, in accordance with Section 4 of the NIRC; and

2. Where the disputing parties are all public entities, the case shall be governed by PD No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987), where the dispute 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.

In the instant case, petitioner is a GOCC. Respondent, on the other hand, represents the BIR which is a government agency. Clearly, PD No. 242 applies and the Secretary of

Justice has jurisdiction over the instant case as it involves a dispute **solely** between a GOCC and an agency of the government.

While it is true that the instant petition was filed on June 20, 2016, or before the promulgation of the decision in the *PSALM case* on August 8, 2017, this Court cannot insist on exercising jurisdiction over it. This was squarely addressed by the Supreme Court in *Commissioner of Internal Revenue v. Secretary of Justice and Philippine Amusement and Gaming Corporation*[2] (*PAGCOR case*), as follows:

> Despite the shift in the construction of P.D. No. 242 in relation to R.A. No. 1125, the Secretary of Justice still resolved PAGCOR's petitions on the merits, stating that:
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>> While this ruling (DBP) has been superseded by the ruling in *Philippine National Oil Company vs. CA*, in view of the prospective application of the PNOC ruling, we (the DOJ) are of the view that this Office can continue to assume jurisdiction over this case which was filed and has been pending with this Office since January 5, 2004 and rule on the merits of the case.
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> We disagree with the action of the Secretary of Justice.
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> PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004. *Philippine National Oil Company v. Court of Appeals* was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. <u>Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country, and are for that</u>

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[2] G.R. No. 177387, November 9, 2016.

> reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings. (*Underscoring supplied, citations omitted*)

Applying the doctrine laid down in the *PAGCOR case* that when an office such as the DOJ assumes jurisdiction over a case at the time when the rules vest jurisdiction upon it, yet, during the pendency of such action, a new doctrine divests the office of the jurisdiction it originally exercised, the proper and prudent course of action to take would be to refer the case to the appropriate body to which jurisdiction has been subsequently vested.[3] Thus, this Court, having had ample opportunity to abide by the ruling in the *PSALM case*, has no jurisdiction over the instant petition filed by petitioner PNOC Exploration Corporation.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by PNOC Exploration Corporation is hereby **DISMISSED**, on jurisdictional ground.

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[3] *Metropolitan Waterworks and Sewerage System (MWSS) v. Commissioner of Internal Revenue*, CTA Case No. 9599, February 22, 2018.

Let this case be referred to the Office of the Secretary of Justice for disposition.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice