REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

DEPARTMENT OF ENERGY REPRESENTED BY SECRETARY ALFONSO G. CUSI,	**CTA *EB* NO. 2241** *(CTA Case No. 10198)*
Petitioner,	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE CAESAR R. DULAY, *Respondent.*	Promulgated: NOV 04 2021 2:58 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is petitioner **DEPARTMENT OF ENERGY's ("DOE")** Petition for Review, filed on 28 February 2020 ("Petition"),[1] with respondent **COMMISSIONER OF INTERNAL REVENUE's ("CIR")** Comment (Re: Petition for Review dated February 28, 2020), filed on 16 July 2020 through registered mail ("Comment"),[2] and petitioner's Reply (To the Comment dated 14 July 2020), filed through registered mail on 2 September 2020 ("Reply").[3]

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[1] Records, pp. 1-41.
[2] *Id.*, pp. 59-70.
[3] *Id.*, pp. 78-86.

The Parties

The **DOE** is an agency of the government created by virtue of ***Republic Act No. ("RA") 7638***, otherwise known as the Department of Energy Act of 1992, and is responsible for preparing, integrating, coordinating, supervising, and controlling all plans, programs, projects, and activities of the government relative to energy exploration, development, utilization, distribution, and conservation.

The **CIR** is the Commissioner of the Bureau of Internal Revenue ("BIR") and has the power to, among others, decide, cancel, and abate tax liabilities pursuant to ***Section 204 (B) of the National Internal Revenue Code, as amended ("NIRC")***. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On 21 October 2019, petitioner filed a Petition for Review (with Urgent Motion for Suspension of Collection of Taxes) ("Original Petition for Review") before the Court in Division.[4] In this Original Petition for Review, petitioner sought the nullification of the deficiency excise tax assessment issued by respondent against it in the total amount of Php18,378,759,473.44 for alleged removal and export of condensates. Further, petitioner prayed that the Warrant of Distraint and/or Levy ("WDL") and Warrant of Garnishment issued by respondent against it and all other acts seeking to collect the aforesaid deficiency taxes be immediately suspended and/or enjoined.

On 28 October 2019, the Court in Division issued Summons, ordering respondent to file an Answer to the Original Petition for Review.[5]

On 8 November 2019, the Court in Division issued the Assailed Resolution dismissing the case for lack of jurisdiction. In the said Resolution, the Supreme Court case of ***Power Sector Assets and Liabilities Management Corporation ("PSALM") v. Commissioner of Internal Revenue ("PSALM Case")***[6] was cited. Following said case, the Court in Division ruled that the Court of Tax Appeals ("CTA") has no jurisdiction over the present case, which involved a purely intra-governmental dispute considering that petitioner is a department of the executive branch while respondent is the head of a bureau of the executive branch.[7]

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[4] Division Docket, pp. 5-38.
[5] *Id.*, pp. 39-40.
[6] G.R. No. 198146, 8 August 2017.
[7] Division Docket, pp. 41-50.

On 28 November 2019, petitioner filed its Motion for Reconsideration (of the Resolution dated 08 November 2019),[8] which, however, was denied in the Assailed Resolution, dated 30 January 2020.[9]

Thus, on 28 February 2020, the instant Petition was filed.

In a Resolution, dated 5 June 2020, respondent was ordered to file a Comment to the Petition.[10] On 19 June 2020, respondent filed a Motion for Extension of Time to File Comment.[11] This was granted by this Court *En Banc* in a Resolution, dated 22 June 2020.[12] On 1 July 2020, respondent filed an Urgent Motion for Additional Time to File Comment through registered mail.[13] This was similarly granted by this Court *En Banc* in a Resolution, dated 28 July 2020.[14] Finally, on 16 July 2020, respondent filed his Comment through registered mail.

On 2 September 2020, petitioner filed its Reply through registered mail. This was noted in a Resolution, dated 30 September 2020.[15]

On 23 September 2020, this Court *En Banc* issued a Resolution submitting the case for mediation.[16] On 10 November 2020, a No Agreement to Mediate was entered into by the parties, which was attested to by the Philippine Mediation Center Unit.[17]

On 11 December 2020, this Court *En Banc* issued a Resolution submitting the Petition for decision.[18]

The Assigned Errors[19]

The issues to be resolved are as follows:

a) Whether or not the CTA has jurisdiction since the parties involved are both government agencies;

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[8] *Id.*, pp. 51-71.
[9] *Id.*, pp. 81-85.
[10] Records, pp. 42-44.
[11] *Id.*, pp. 45-49.
[12] *Id.*, p. 50
[13] *Id.*, pp. 52-57.
[14] *Id.*, p. 77.
[15] *Id.*, pp. 90-92.
[16] *Id.*, pp. 87-89.
[17] *Id.*, pp. 93-94.
[18] *Id.*, pp. 95-98.
[19] See Issues in the Petition, *id.*, pp. 5-6.

b) Whether or not the WDL and Warrants of Garnishment are void for being issued without observing due process of law;

c) Whether or not excise taxes may be imposed on condensates; and

d) Whether or not petitioner is liable to pay the assessed deficiency excise taxes.

Arguments of the Parties

In the Petition, petitioner argued as follows:[20]

1. The CTA has and should assume jurisdiction over this case. Under ***Section 3, Rule 8 of the Revised Rules of the CTA***, a party adversely affected by a decision or ruling of the CIR on disputed assessments may appeal to the CTA by Petition for Review within thirty (30) days upon receipt of a copy of such decision or ruling. Moreover, ***Section 4 of the NIRC*** provides that "the power to decide disputed assessments,... fees or other charges, penalties imposed in relation thereto... is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals";

2. As between a general law and a special law which governs specific matters, the latter shall prevail. In ***Philippine National Oil Corporation v. Court of Tax Appeals***,[21] the Supreme Court had ruled that ***Presidential Decree No. ("PD") 242*** is a general law that deals with administrative settlement or adjudication of disputes, claims, and controversies between or among government offices, agencies, and instrumentalities, including government-owned or controlled corporations ("GOCCs"). On the contrary, ***RA 1125***, specifically ***Section 7*** thereof on the jurisdiction of the CTA, is a special law. Thus, it should constitute an exception to ***PD 242.*** Consequently, all disputes, claims and controversies, falling under ***Section 7 of RA 1125,*** although solely among government offices, agencies and instrumentalities, including GOCCs, remain in the exclusive appellate jurisdiction of the CTA;

3. The CTA has the requisite expertise and experience in resolving tax issues. It is recognized that the CTA is a highly specialized body created specifically for the purpose of reviewing tax cases. As compared to the Department of Justice ("DOJ") and Office of the Solicitor General

[20] Records, pp. 6-20.
[21] G.R. No. 109976, 26 April 2015.

("OSG"), the CTA has the undoubted expertise to resolve the issues presented by the DOE;

4. The ***PSALM Case*** is inapplicable to the Petition. It stemmed from a different factual milieu. In said case, the petition for adjudication of the dispute with the BIR was an original action filed by PSALM pursuant to a Memorandum of Agreement ("MOA") executed among PSALM, BIR and the National Power Corporation ("NPC"). In said case, the CIR's collection of taxes from PSALM was not based on a valid assessment, but by virtue only of the MOA among it, PSALM and the NPC. With the execution of the MOA, the CIR had voluntarily submitted to the jurisdiction, power, and authority of the DOJ;

5. Petitioner was denied due process. It is important to point out that this case involves a procedural lapse on the part of the BIR amounting to a denial of petitioner's right to due process, which is not present in the ***PSALM Case***. Such denial of due process may only be rectified by this Court, pursuant to ***Rule 4, Section 3 (c) (1) of the Revised Rules of the CTA***. In the subject WDL and/or Warrants of Garnishment, the assessments against petitioner have purportedly become final and executory, thereby necessitating the exclusive authority and jurisdiction of this Court pursuant to said provision. In the ***PSALM Case***, there was no final and executory assessment to be invalidated or nullified, as PSALM already paid in protest the deficiency taxes being demanded, unlike here where an assessment has allegedly become final and executory, resulting in the issuance of the Warrants against petitioner;

6. The Warrants issued by respondent are null and void. In view of respondent's failure to faithfully observe the requirements of due process in the issuance of tax assessments, the Warrants served against petitioner are null and void. In the case at bar, no Formal Letter of Demand ("FLD") or Final Assessment Notice ("FAN") were issued to petitioner. Hence, there was a denial of due process on the part of petitioner. Also, given such, there is no merit in respondent's contention that due to petitioner's failure to file a Protest to the FLD/FAN, the assessment became final and executory, since there was no FLD/FAN that was served to petitioner to begin with;

7. Condensates are not subject to excise taxes. Condensates, by nature, are simply natural gas in a liquefied state, which, along with locally extracted natural gas, are exempt from excise taxes; and

8. Even assuming that condensates are not exempt, petitioner is still not liable to pay the excise taxes. Petitioner is not among the persons liable to pay excise taxes enumerated under ***Section 130 (A) (1) of the NIRC.***

It must be emphasized that petitioner is neither the owner, lessee, concessionaire, nor the operator of a mining claim, who are the persons liable for the excise tax under the aforesaid provision, as it is merely the grantor of the mining rights or service contract in favor of the owner, lessee, concessionaire or operator, or service contractor, on behalf of the State, which owns the resources following the Regalian Doctrine as embodied in the ***Constitution***. Rather, the word "owner" (of the mining claim) refers not to the petitioner but to the service contractors of petitioner.

In his Comment, respondent counter-argued as follows:[22]

1. He agrees with petitioner that the CTA may assume jurisdiction over assessment cases between respondent and another government entity. The intention of the law is to vest the CTA the exclusive jurisdiction to review on appeal the decisions of the CIR as it is the Court which possesses the requisite specialization to do so. ***RA 9282***, which was the amendment to ***RA 1125***, was enacted later than ***PD 242***. Had the framers of the law intended that the DOJ shall have jurisdiction over tax cases between government entities, they should have included qualifications and exemptions in the said amendment and excluded such kind of cases from the jurisdiction of the CTA;

2. The assessments involved in the instant case have already become final, executory, and demandable. Thus, the CTA has no jurisdiction over the instant Petition. Contrary to petitioner's claim, the FLD and FAN were issued and served to petitioner. Despite this, petitioner did not file a valid Protest to the FLD/FAN. Consequently, the assessment has become final, executory, and demandable and can no longer be contested; and

3. The CTA's jurisdiction is limited to decision/inaction by the CIR in cases involving disputed assessments. In this case, there is no disputed assessment to speak of, as records show that petitioner failed to file a Protest to the FLD/FAN. Consequently, the assessment has become final and executory over which the CTA has no jurisdiction to take cognizance of.

In response to respondent's allegations in the Comment, petitioner presented the following arguments in its Reply:[23]

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[22] Records, pp. 60-66.
[23] *Id.*, pp. 79-83.

1. Petitioner was denied due process of law when respondent failed to afford it with the fifteen (15) day period to respond to the Preliminary Assessment Notice ("PAN") before the issuance of an FLD/FAN. Newly discovered evidence show that an FLD/FAN was actually served upon petitioner although improperly done. However, this only shows that respondent failed to faithfully observe the requirements of due process in the issuance of tax assessments. As admitted by respondent, the PAN was served upon petitioner on 7 December 2018. On the other hand, petitioner was able to discover that an FLD/FAN was issued and served to it on 17 December 2018. Thus, respondent failed to give petitioner the full fifteen (15) day period to file a Reply to the PAN as he immediately issued the FLD/FAN ten (10) days after the PAN was received by petitioner. This is an apparent denial of due process on the part of petitioner. Hence, the assessment should be declared null and void;

2. There was no proper service of the FLD/FAN to petitioner. The person who received the FLD/FAN was not an authorized agent of petitioner who is permitted to receive the FLD/FAN issued against it;

3. The CTA has jurisdiction over the instant Petition as the assessment could have never become final, executory, and demandable; and

4. Condensates are not subject to excise taxes. Even if they are, petitioner is still not liable to pay the same.

The Ruling of the Court En Banc

The Petition is impressed with merit.

The Court in Division had jurisdiction over the Original Petition for Review.

In the list of issues to be determined by this Court, the issue on jurisdiction takes precedence over others.

Relying on the ***PSALM Case***, the Court in Division dismissed the Original Petition for Review as it was between two government agencies.

We find the Court in Division was in error in so ruling.

In fact, respondent, himself, agrees that this Court has jurisdiction over the case even if the parties are both government agencies.

The *PSALM Case* is not applicable to the present case.

In the ***PSALM Case***, the Supreme Court ruled that under ***PD 242***, all disputes and claims solely between government agencies and offices, including GOCCs shall be resolved by the DOJ or the OSG depending on the issue involved:

> "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...
>
> xxx xxx xxx
>
> 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 xxx xxx
>
> It is only proper that intra-governmental disputes be settled administratively since the opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision. Section 17, Article VII of the Constitution states unequivocally that: 'The President shall have control of all the executive departments, bureaus and offices.'"

Following this reasoning, the Supreme Court ruled that the DOJ and not the CTA had jurisdiction over the issue involved in the ***PSALM Case***. Notably, however, the facts involved in the ***PSALM Case*** differ from the traditional tax assessment cases elevated before the CTA.

A distinct element of said case is the presence of a MOA executed among PSALM, BIR, and the NPC with respect to the payment of alleged deficiency Value-Added Taxes ("VAT") arising from the sale of NPC of two power plants. Following the MOA, NPC and PSALM would pay basic VAT amounting to Php3,813,080,472.00 under protest to the BIR. NPC, PSALM, and the BIR further undertook in the MOA that they would seek resolution of the issue on the deficiency VAT before the appropriate court or body and that the ruling of such court or body would be immediately executory without need of notice or demand from the NPC or PSALM. Finally, a DOJ ruling that is favorable to NPC and PSALM would be tantamount to filing of an application for refund.

In accordance with the MOA, PSALM paid the deficiency VAT. Thereafter, PSALM filed a Petition with the DOJ for the adjudication of the dispute with the BIR to resolve the issue of whether the sale of the power plants should be subject to VAT. The DOJ ruled in favor of PSALM, declaring the deficiency VAT assessment null and void. The CIR then questioned the jurisdiction of the DOJ via a Petition for Certiorari with the Court of Appeals ("CA"), reasoning that the dispute involved tax laws administered by the BIR and therefore within the jurisdiction of the CTA. The CA declared that the DOJ committed grave abuse of discretion amounting to lack of jurisdiction in issuing the ruling for it was the CTA which had jurisdiction. PSALM appealed to the Supreme Court which decreed that the DOJ indeed had jurisdiction.

The Supreme Court, in ***University of the East v. Veronica M. Masangkay,***[24] provided that in order to apply the principle of *stare decisis*, the facts and issues of the subject case must be on all fours with the factual milieu of the case precedent sought to be utilized, to wit:

> "Applying said principle, the CA held that Our ruling in *University of the East v. Adelia Rocamora* is a precedent to the case at bar, involving, as it does, herein respondents' co-author and tackling the same violation-the alleged plagiarism of the very same materials subject of the instant case.
>
> In this petition, UE, however, asserts that the case of respondents substantially varies from Rocamora so as not to warrant the application of said rule.
>
> Indeed, the CA erred when it relied on Our ruling in *University of the East v. Adelia Rocamora* in resolving the present dispute. Our decision in *Rocamora,* rendered via a Minute Resolution, is not a precedent to the case at bar even though it tackles the same violation-the alleged plagiarism of the very same materials subject of the instant case, which was initiated by respondents' co-author. This is so since respondents are simply not similarly situated with Rocamora so as to warrant the application of the doctrine of *stare decisis.*
>
> **A legal precedent is a principle or rule established in a previous case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts.**
>
> Here, **We find that the Rocamora case is not on all fours with the present dispute, thereby removing it from the application of the principle of *stare decisis.*** *First,* herein respondents categorically represented to UE under oath that the Manuals were free from plagiarism-an act in which their co-author Rocamora did not participate. *Second,* respondents benefited financially from the sale of the Manuals while Rocamora did not. *Third,* respondents acquiesced to UE's decision to terminate their services and even requested the release of and thereafter claimed the benefits due them."

[24] G.R. No. 226727, 25 April 2018.

(Emphasis, Ours)

Thus, in order for the ruling in the ***PSALM Case*** to be equally applicable to the present controversy, there must be a similarity in the facts and issues involved in both cases. Such similarity is not extant.

In the case at bar, the facts involved are as follows:[25]

a. Petitioner received the PAN. Under the PAN, petitioner was subjected to deficiency excise taxes and given fifteen (15) days within which to contest the assessment; otherwise, an FLD/FAN would be issued;
b. Petitioner responded to the PAN through a letter, dated 20 December 2018;
c. No further communication was received from respondent until 19 September 2019, when petitioner received the WDL, which was allegedly based on an FLD/FAN issued against petitioner; and
d. On 21 October 2019, petitioner filed the Original Petition for Review.

It is easy to see how there is, indeed, no similarity between the facts and issues of the instant case and those of the ***PSALM Case***, as narrated above.

To reiterate, there was no decision or inaction (on a disputed assessment, refund of internal revenue taxes, or other matters involving the application of the provision of the ***NIRC*** in the ***PSALM Case***. On the other hand, the actions of the parties were governed by the MOA the entered into. Accordingly, PSALM could not have sought recourse with the CTA, even if it wanted to, as the CTA would have no jurisdiction over the same. It is noteworthy that should PSALM have proceeded in filing a case with the CTA, it would have been availing of an original action before the CTA for the purpose of interpreting the MOA, a matter that does not fall within the jurisdiction of the CTA.[26] Hence, with the execution of the MOA and in accordance with its terms, the CIR and PSALM voluntarily submitted to the jurisdiction, power, and authority of the DOJ.

This is not the situation involved in the instant case, where petitioner's cause of action is hinged upon a law, specifically ***Section 7 (a) (1) of RA 1125, as amended by RA 9282*** and ***RA 9503 ("CTA Law")***, particularly on the application of the CTA's "other matters" jurisdiction, a law not even considered and discussed with much weight in the ***PSALM Case***. Hence, absent any agreement between or among the parties on the voluntary

[25] Division Docket, pp. 2-5.
[26] Section 3, Rule 4, Revised Rules of the CTA.

submission of the tax issues to the DOJ, the default provision on CTA's exclusive appellate jurisdiction should prevail.

Undoubtedly, then, the principle of *stare decisis* is inapplicable to the present case, making the doctrines and principles enunciated in the ***PSALM Case*** equally inapplicable to the present controversy.

Not all controversies between or among government agencies and offices fall under the coverage of PD 242 .

Relying upon the ***PSALM Case*** which applied PD 242 in holding that all controversies between or among government agencies and offices should be under the jurisdiction of the Department of Justice (if the case involves only questions of law), the Court in Division dismissed the original Petition.

In ***Orion Water District, et. al. v. The Government Service Insurance System ("Orion Case")***,[27] the Supreme Court, however, clarified that not all controversies between or among national government entities fall under the mandate of ***PD 242***. The ***Orion Case*** provides:

> **"As properly held by the CA, the provisions of E.O. No. 292 are inapplicable in the instant case. It bears to stress that not all controversies between or among government offices, departments or instrumentalities fall under the mentioned provisions of E.O. No. 292. To fully understand the scope of the law, reference must be made to Presidential Decree (P.D.) No. 242, the precursor of Chapter 14, Book IV of E.O. No. 292, from which the entirety of the provisions in question was lifted. Under P.D. No. 242, it was clearly articulated that it only applies to particular instances of disputes among government offices. Section 1 thereof states:**
>
> > SEC. 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.
>
> **That the law is not all-encompassing was elaborated in *Philippine Veterans Investment Development Corporation (PHIVIDEC) v. Judge Velez*, where the Court emphasized that P.D. No.**

[27] G.R. No. 195382, 15 June 2016, *citing Philippine Veterans Investment Development Corporation (PHIVIDEC), et. al. v. Judge Velez,* G.R. No. 84295, 18 July 1991.

242 applies only to certain cases of disputes. It does not intrude into the jurisdiction of regular courts as it 'only prescribes an *administrative* procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including [GOCCs], so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements.'

Section 1 of P.D. No. 242 is now Section 66, Chapter 14, Book IV of E.O. No. 292. Although there was a noticeable change in the language of the law, **there was no indication of an intention to broaden its scope far larger than the original law. Section 66 reads 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.

Following the *ejusdem generis* rule on statutory construction, disputes that should be referred to administrative arbitration must relate to the interpretation and application of statutes, contracts or agreements, or any other cases of similar nature. The usage of the phrase '*such as those arising from the interpretation and application of statutes, contracts or agreements*' in the provision means that the situation must be held similar or analogous to those expressly enumerated in the law in question.

It does not need further elaboration that the instant case does not partake of the instances contemplated in Section 66. The complaint filed by GSIS does not concern the interpretation of a law, contract or agreement between government agencies. It is a complaint for collection of sum of money, specifically to unremitted premium contributions which by law, the OWD, as the employer, is mandated to deliver to GSIS within the prescribed period of time. There is no obscure question of law or ambiguous provision of a contract involved that resulted to a discord between GSIS and OWD, which could have warranted the application of Section 66. On the contrary, the law is unequivocal with respect to the duty of GSIS to ensure the prompt collection of contributions and OWD's responsibility, as an employer, to deduct and remit contributions to the system. Unfortunately, OWD reneged in its obligation and refused to comply despite repeated notices; hence, the filing of a complaint for collection of unremitted contributions by GSIS." (Emphasis and underscoring, Ours)

It becomes clear in the ***Orion Case*** that ***PD 242*** merely prescribes an administrative procedure for the settlement of controversies between governments agencies and offices, specifically "**for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements**". In the words of Orion, "**(I)t does not intrude into the jurisdiction of regular courts**," here, the CTA.

Again, it becomes clear that the instant case does not fall within the scope of ***PD 242*** since the Original Petition for Review does not involve the interpretation of statute, contract, or agreement but an issue questioning the correctness of the tax collection proceedings instituted by respondent against petitioner, which is certainly within the jurisdiction of the CTA.

The Court in Division's ruling is contrary to the Constitution.

Furthermore, to affirm the ruling of the Court in Division dismissing the instant case for lack of jurisdiction runs against the constitutional mandate of the judiciary under ***Article VIII, Section 1 of the 1987 Constitution*** which states:

> "Section 1. The **judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law**.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."
> (Emphasis and underscoring, Ours)

Judicial Power is defined as "the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights."[28] The concept behind the same was further elaborated by the Supreme Court in the case of ***Lopez v. Roxas***,[29] to wit:

> "This provision **vests in the judicial branch of the government, not merely some specified or limited judicial power**, but **"the" judicial power under our political system, and, accordingly, the entirety or "all" of said power, except, only, so much as the Constitution confers upon some other agency,** such as the power to "judge all contests relating to the election, returns and qualifications" of members of the Senate and those of the House of Representatives, which is vested by the fundamental

[28] Lopez v. Roxas, L-25716, 28 July 1966.
[29] *Ibid.*

law solely in the Senate Electoral Tribunal and the House Electoral Tribunal, respectively.

> **Judicial power is the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights. The proper exercise of said authority requires legislative action: (1) defining such enforceable and demandable rights and/or prescribing remedies for violations thereof; and (2) determining the court with jurisdiction to hear and decide said controversies or disputes, in the first instance and/or on appeal. For this reason, the Constitution ordains that "Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts", subject to the limitations set forth in the fundamental law**."
> (Emphasis and underscoring, Ours)

Based on the foregoing, the lower courts' exercise of authority to settle justiciable controversies or disputes is dependent on legislative action. Meaning, the jurisdiction of the lower courts must first be defined by Congress through a law before it can exercise its judicial power. However, it is also undeniable, that once said right is granted, the lower courts' power to decide on cases is absolute, except if limited by the constitution or by law.

In the case of the CTA, Congress enacted the ***CTA Law***, which is the law defining the jurisdiction of the CTA over the following relevant instances, to wit:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue 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 or other laws administered by the Bureau of Internal Revenue;
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; xxx"
> (Emphasis and underscoring, Ours)

To reiterate, the original Petition for Review involves an issue questioning the correctness of the assessment issued by the authorized representative of the Commissioner of Internal Revenue. The ***CTA Law*** does not provide for an exception or limit as to the jurisdiction of the CTA over disputed assessments. Hence, the case clearly falls under ***Section 7(a)(1) of the CTA Law***.

Aside from the ***CTA Law***, ***Section 4 of the National Internal Revenue Code of 1997, as amended*** is also clear that disputed assessments fall under the jurisdiction of the CTA, to wit:

> "SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> **The power to decide disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue **is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals**."
> (Emphasis, Ours)

All told, the CTA must exercise jurisdiction over the instant case, lest it be deemed to have abandoned its Constitutional obligation to rule over disputed assessments such as that presented in the instant case.

RA 1125, as amended by RA 9282 and RA 9503 is the exception to the general law that is PD 242.

Notwithstanding the doctrine in the ***PSALM Case***, ***PD 242*** cannot divest CTA of its judicial power to exercise jurisdiction over the present controversy. As already demonstrated above, from the way the relevant provisions in ***PD 242*** are worded, it simply serves as a general rule that all disputes, claims, and controversies between national government entities shall be settled by either the OSG or the DOJ. ***RA 9282*** (which was an amendatory law to the ***CTA Law***, the original statute which created the CTA) works as an exception: when it comes to the inaction and decisions of the 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 *NIRC* or other laws administered by the BIR, the CTA shall have jurisdiction.

It is worthy to emphasize that jurisdiction over tax cases between or among national government entities is either with the CTA or with the DOJ; it cannot be with both. Therefore, "[e]ither the two laws are reconciled and harmonized or, if they cannot, the earlier one must yield to the later one, it being the later expression of legislative will."[30] Further emphasizing this need to reconcile contradictory laws is ***Section 17 of RA 9282*** which states, to wit:

> "Section 17. Repealing Clause. - All laws, executive orders, executive issuances or letter of instructions, or any part thereof, inconsistent with or contrary to the provisions of this Act are hereby deemed repealed, amended or modified accordingly."

Accordingly, the ***CTA Law*** prevails.

In fact, this matter was discussed by the Supreme Court in ***Philippine National Oil Company v. Court of Appeals, et al. and Philippine National Bank v. Court of Appeals, et al. ("PNOC Case")***,[31] as follows:

> "When there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. The following rule should principally govern instead:
>
> > **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.
> >
> > Specific legislation upon a particular subject is not affected by a general law upon the same subject unless it clearly appears that the provisions of the two laws are so repugnant that the legislators must have intended by the later to modify or repeal the earlier legislation. The special act and the general law must stand together, the one as the law of the particular subject and the other as the general law of the land. (*Ex Parte United States, 226 U. S., 420; 57 L. ed., 281; Ex Parte Crow Dog, 109 U. S., 556; 27 L. ed., 1030; Partee vs. St. Louis & S. F. R. Co.*, 204 Fed. Rep., 970.)

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[30] Ruben E. Agpalo, Statutory Construction, Fifth Edition 2003, p.272, citing *City of Naga v. Agna,* G.R. No. L-36049, 31 May 1976, and *Erana v. Vergel de Dios,* G.R. No. L-3393, 23 November 1949.

[31] G.R. Nos. 109976 and 112800, 26 April 2005.

> **Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a conflict.** (*Crane v. Reeder and Reeder, 22 Mich., 322, 334; University of Utah vs. Richards*, 77 Am. St. Rep., 928.)

It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails – *Generalia specialibus non derogant.*

Sustained herein is the contention of private respondent Savellano that P.D. No. 242 is a general law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies. It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines. **On the other hand, Rep. Act No. 1125 is a special law dealing with a specific subject matter – the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein.**

Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect Rep. Act No. 1125. **Rep. Act No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242.** Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant."
(Emphasis and underscoring, Ours)

Therefore, to insist that the Original Petition for Review falls under the jurisdiction of the OSG or the DOJ is an anathema to ***Article VIII, Section 1 of the 1987 Constitution***, established laws and jurisprudence. Indeed, upholding the Assailed Resolutions by the Court in Division effectively deprives the CTA of its judicial power to decide on disputes clearly falling under its jurisdiction.

The CTA has undoubted expertise in tax cases.

Likewise, it is worthy to stress that the CTA is in the best position to handle tax cases effectively and efficiently due to its expertise on the subject. This is evident in the ***Abstract of House Bill No. 6673***, where it is shown that ***RA No. 9282*** was enacted to avoid delays in the final disposition of tax cases, to effectively change and maximize the development of jurisprudence and judicial precedence on all tax matters, and to improve tax collection, to wit:

> **"The bill seeks to lodge with the Court of Tax Appeals (CTA) both criminal and civil jurisdictions over tax and customs cases in order to avoid needless delays in the final disposition of such cases.** The vesting of both criminal and civic jurisdictions of a tax case in one court **will likewise effectively change and maximize the development of jurisprudence and judicial precedence on all tax matters which is of vital importance to revenue administration.** The bill also seeks to elevate the rank of the CT A to the level of the Sandiganbayan, widen its organizational structure and expand its jurisdiction. **The approval of the bill is seen to improve the tax collection efficiency of the Bureau of Internal Revenue, the Bureau of Customs and other revenue collecting agencies of the government."**
> (Emphasis and underscoring, Ours)

This expertise of the CTA in tax matters was stressed in ***Macario Lim Gaw, Jr. v. CIR***,[32] where it was stated that the "CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems." This was, in fact, the basis of the Dissent of the Honorable Retired Justice Mariano del Castillo in the ***PSALM Case***:

> "xxx Unlike the Secretary of Justice, the BIR and the CT A have developed expertise on tax matters. It is only but logical that they should have exclusive jurisdiction to decide on these matters. The authority of the Secretary of Justice under PD 242 to settle and adjudicate all disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, therefore, does not include tax disputes, which are clearly under the jurisdiction of the BIR and the CTA."

Thus, all tax disputes and issues should fall under the exclusive jurisdiction of the CTA.

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[32] G.R. No. 222837, 23 July 2018.

Recent jurisprudence show that the Supreme Court recognized the CTA's jurisdiction over tax issues involving government agencies and offices.

It is worthy to point out that the Supreme Court has consistently recognized the CTA's jurisdiction over cases involving controversies among government agencies and offices. The High Court, in a 2016 case entitled ***Commissioner of Internal Revenue v. Secretary of Justice, and Philippine Amusement and Gaming Corporation ("PAGCOR")***,[33] abided by the jurisprudence set by the ***PNOC Case***, stating that, under no uncertain terms, the DOJ has no jurisdiction to review disputed assessments despite ***PD 242***, jurisdiction of which belongs exclusively to CTA.

Similarly, in a 2017 case also involving PAGCOR, which is a duly created government instrumentality, the Supreme Court remanded to the CTA the determination of the final tax amounts to be paid by PAGCOR.[34]

Most recently, in a July 2019 case involving PSALM itself entitled ***PSALM v. Commissioner of Internal Revenue***,[35] the Supreme Court cancelled an assessment made by respondent without divesting the CTA of its jurisdiction.

Clearly, to date, and despite the ruling in the ***PSALM Case***, the Supreme Court acknowledges the CTA's exercise of jurisdiction over tax cases between or among national government entities.

Following these discussions, therefore, the Court in Division has undoubted jurisdiction to try the present controversy. To rule that the CTA has no jurisdiction over tax cases between and among government agencies and offices will create a dangerous precedent and raise the question as to whether similar cases already decided by the CTA should be voided. The prevailing rule should be that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void.[36]

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[33] G.R. No. 177387, 9 November 2016.
[34] *PAGCOR v. CIR*, G.R. Nos. 210689, 210704 and 210725, 22 November 2017.
[35] G.R. No. 226556, 3 July 2019.
[36] *Sebastian v. Spouses Cruz, et al.*, G.R. No. 220940, 20 March 2017.

Other Matters Jurisdiction of the CTA

Respondent, while admitting that the Court in Division has jurisdiction over tax assessment cases between him and another government entity, maintains that the Court in Division's jurisdiction is solely confined to appeals from a final decision or assessment which he made, or in cases wherein he did not act within the period prescribed by the ***NIRC*** involving disputed assessments, refunds, or other matters arising under said law or other laws administered by the BIR; and considering that the subject deficiency tax assessments had already become final and executory, the Court in Division is devoid of any jurisdiction to exercise its power of appellate review over the Original Petition for Review. This is terribly misplaced.

Jurisdiction is conferred by law. Admittedly, the CTA, as a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[37]

Section 7 (a) (1) of the CTA Law provides for the CTA's jurisdiction, thus:

> "Section 7. Jurisdiction. – The CTA shall exercise:
>
> (1) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue 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 or other laws administered by the Bureau of Internal Revenue;"**
> (Emphasis, Ours)

Section 3 (a) (1), Rule 4 of the Revised Rules of the CTA further provides as follows:

> "Rule 4
>
> Sec.3. Cases within the jurisdiction of the Court in Divisions.-
>
> The Court in Division shall exercise:
>
> (1) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under**

[37] Commissioner of Internal Revenue vs. Silicon Philippines, Inc., G.R. No. 169778, 12 March 2014.

> **the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue."**
> (Emphasis, Ours)

In this case, petitioner filed the Original Petition for Review to challenge the validity of the subject WDL and the Warrants of Garnishment on the ground that it was issued based on a void deficiency excise tax assessment.[38] In effect, petitioner is not appealing a decision by respondent on a disputed assessment. As a general rule, the Court in Division acquires jurisdiction over a decision of respondent on a "disputed assessment" which in turn is elevated by a taxpayer to the Court in Division via a Petition for Review. However, the CTA in many instances has also taken cognizance of cases falling under the category of "other matters" including the determination of the validity of the WDL and the Warrants of Garnishment.

In the case of ***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue***,[39] the Supreme Court affirmed the jurisdiction of the CTA over disputes involving the validity of WDLs and clarified the coverage of the term "other matters", as follows:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of the Statue of Limitations was validly effected."
> (Emphasis, Ours)

More recently, in the case of ***Commissioner of Internal Revenue v. Bank of the Philippine Islands***,[40] the Supreme Court had the occasion to reaffirm the CTA's jurisdiction over issues surrounding the issuance of WDLs and Warrants of Garnishment under its "other matters" jurisdiction. The Supreme Court ruled in this wise:

> "The CTA properly exercised its jurisdiction over BPI's petition for review.
>
> The OSG relies heavily on the letter dated February 5, 1992—that it was a 'final decision' denying Citytrust's protest. Citytrust's failure to appeal the 'final decision' within 30 days from receipt thereof rendered the tax assessment final, executory, and unappealable. Thus, BPI's Second

[38] Division Docket, pp. 10-17.
[39] G.R. No. 162852, 16 December 2004.
[40] G.R. No. 227049, 16 September 2020.

CTA petition in 2011 was filed out of time, over which the court below did not acquire jurisdiction.

Petitioner's reasoning is specious and misplaced.

First, this was the CIR's same argument in the 2018 Case. To recall, the Court did not give evidentiary weight to the letter dated February 5, 1992 due to the CIR's failure to prove Citytrust's receipt thereof. In the present case, not only is there still no proof of receipt. The CIR did not even attach a copy of the letter relied upon to the present petition. Notably, failure to append 'material portions of the record as would support the petition' is a ground for dismissal thereof.

Second, the aforementioned letter is irrelevant in ascertaining whether or not the tax court properly took cognizance of BPI's Second CTA Petition. **As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else.**

The law expressly vests the CTA the authority to take cognizance of 'other matters' arising from the 1997 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.

Thus, the CTA properly exercised jurisdiction over BPI's Second Petition."
(Emphasis, Ours)

Thus, the Court in Division had jurisdiction under the term "other matters" pursuant to the aforequoted ***Section 7 (a) (1) of the CTA Law and Section 3 (a) (1), Rule 4 of the Revised Rules of the CTA*** to determine whether respondent's issuance of the subject WDL and Warrant of Garnishment were properly made.

The Original Petition for Review was Timely Filed

With the ruling that the Court in Division had jurisdiction to determine the validity of the subject WDL and the Warrants of Garnishment, it becomes imperative to determine if petitioner complied with the periods stated in the ***Revised Rules of the CTA*** to ascertain if petitioner properly invoked such jurisdiction. This matter is equally essential to determining whether the Court

in Division can indeed assume jurisdiction over the Original Petition for Review. ***Section 3 (a) of the Revised Rules of the CTA*** provides, as follows:

> "SEC. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling,** or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes."
> (Emphasis, Ours)

Following this provision, appeals before the Court in Division shall be made within thirty (30) days after receipt of the assailed decision or ruling or after the expiration of the period fixed by law for respondent to act. In the case at bar, petitioner received the WDL on 19 September 2019[41] while the Warrant of Garnishment was served to Land Bank of the Philippines on 20 September 2021.[42] Collectively, these Warrants are deemed to be respondent's assailed decision to collect alleged deficiency taxes against petitioner. As the WDL was received earlier, and as such, on its date of receipt, petitioner first learned of respondent's decision to collect the alleged deficiency excise taxes, the date of receipt of the WDL should be used as the starting date for the thirty (30) day period given to petitioner to appeal before the CTA via a Petition for Review.[43] Correspondingly, petitioner had until 19 October 2019 to file an appeal via a Petition for Review before the Court in Division to contest the said Warrants. As the said date fell on a Saturday, the due date was moved to the next succeeding working day, which is 21 October 2019. As petitioner filed the Original Petition for Review on 21 October 2019, it timely filed its appeal before the Court in Division. Thus, the Court in Division can properly assume jurisdiction over the instant case.

The required affirmative vote of at least five (5) members of the Court *En Banc* was not obtained

However, ***Section 2 of the CTA Law*** provides the following:

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[41] Annex "A" of the Petition for Review (with Urgent Motion for Suspension of Collection of Taxes), Division Docket, p. 26.
[42] Annex "B" of the Petition for Review (with Urgent Motion for Suspension of Collection of Taxes), *id.*, p. 27.
[43] *Id.*, p. 6.

"Section 2. *Sitting En Banc or Division; Quorum; Proceedings.*

Xxx xxx xxx

The affirmative vote of five (5) members of the Court En Banc shall be necessary to reverse a decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level."
(Emphasis, Ours)

Likewise, ***Section 3, Rule 2 of the Revised Rules of the CTA*** states that the judgment or order appealed from shall stand affirmed when the reversal of the same cannot garner the necessary majority affirmative vote of at least five (5) members of the Court *En Banc*:

"Section 3. *Court en banc; quorum and voting.* – The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. **The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division** xxx **Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.**"
(Emphasis, Ours)

In the deliberation of the instant case, only Justice Erlinda P. Uy, Justice Ma. Belen M. Ringpis-Liban, and Justice Marian Ivy F. Reyes-Fajardo concurred with the opinion of the ponente that the instant Petition should be granted and that the case be remanded to the Court in Division.

WHEREFORE, considering that the required affirmative vote of at least five (5) members of the Court *En Banc* was not obtained in the instant case, pursuant to ***Section 2 of the CTA Law*** in relation to ***Section 3, Rule 2 of the Revised Rules of the CTA***, the instant Petition is hereby **DENIED**. The Assailed Resolutions, dated 8 November 2019 and 30 January 2020, hereby **STAND AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(With due respect—see Dissenting Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

(With due respect, I join P.J.'s D.O.)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join P.J.'s D.O.)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I join P.J.'s D.O.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DEPARTMENT OF ENERGY REPRESENTED BY SECRETARY ALFONSO G. CUSI, Petitioner,	**CTA EB No. 2241** (CTA Case No. 10198)
	Present:
- versus -	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, and, REYES-FAJARDO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE CAESAR R. DULAY, Respondent.	Promulgated: NOV 04 2021 2:58 p.m.

x - x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent on the *ponencia* in granting the present Petition for Review and in remanding the case to the Second Division of the Court of Tax Appeals (Court in Division) for trial. I take exception to the findings of the *ponencia* that : *(i)* the Court in Division has jurisdiction over the original Petition for Review; *(ii)* ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue***[1] **("*PSALM*")** is not applicable to the present case; *(iii)* not all controversies between or among government agencies and offices fall under the coverage of Presidential Decree (PD) No. 242; *(iv)* the Court in Division's ruling is contrary to the Constitution; and *(v)* Republic Act

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

(RA) No. 1125, as amended by RA No. 9282 and RA No. 9503, is the exception to the general law that is PD No. 242.

I submit that the Court in Division has no jurisdiction over the Petition for Review in CTA Case No. 10198.

The jurisdiction of the Court of Tax Appeals (CTA) under RA No. 1125, as amended, *vis-à-vis* PD No. 242 relative to controversies involving intra-governmental disputes or controversies is not novel. In *Davao City Water District vs. Commissioner of Internal Revenue*[2] *("Davao City Water District"),* the Court *En Banc* had already ruled **that "the Supreme Court has declared in the PSALM case, in no uncertain terms, that all controversies involving government offices, bureaus, agencies and instrumentalities, including GOCCs, fall within the initial jurisdiction of the DOJ - such interpretation must be respected by all courts. Unless and until modified by the Supreme Court *En Banc,* the interpretation of PD 242 in the PSALM case should be applied in determining the proper forum with jurisdiction to resolve disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government."**

In my Concurring Opinion in *Davao City Water District,* I lengthily discussed the development of the jurisprudence on the application of PD No. 242 relative to RA No. 1125, as amended. I reiterate *verbatim* my position on the matter hereinafter.

Considering the implication of the pronouncement in *PSALM* to cases pending before the Court of Tax Appeals (CTA) involving *intragovernmental disputes or controversies,* I find it necessary to re-visit the development of jurisprudence anent the application of Presidential Decree (PD) No. 242 *vis-a-vis* Republic Act (RA) No. 1125, as amended.

In **1981**, the Supreme Court *En Banc,* in ***Development Bank of the Philippines vs. Court of Appeals***[3] affirmed the findings of the Court of Appeals which ruled that the CTA had no jurisdiction to resolve the controversy between Development Bank of the Philippines, a GOCC, and the Commissioner of Customs and that the case should

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[2] Penned by Associate Justice Catherine T. Manahan, with Presiding Justice Roman G. Del Rosario, and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Jean Marie A. Bacorro-Villena concurring, and Associate Justices Ma. Belen M. Ringpis-Liban and Maria Rowena Modesto-San Pedro, dissenting; CTA EB No. 1822, October 28, 2019.

[3] G.R. No. 86625, December 22, 1981.

have been decided in accordance with the mode of settlement and adjudication set forth in PD No. 242. Anent the conflict between the provisions of PD No. 242 and RA No. 1125, the Supreme Court *En Banc* held:

> "The Court also rejects the DBP's second argument and expresses with the conclusion of the Court of Appeals- and the basic premises thereof that there is an "irreconcilable repugnancy ... between Section 7(2) of R.A. No. 1125 and P.D. No. 242," and hence, that the later enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier."

In **2005**, the Supreme Court *En Banc* promulgated ***Philippine National Oil Company vs. The Honorable Court of Appeals et al.***[4] ***("PNOC")*** declaring that CTA has jurisdiction to resolve controversies falling under RA No. 1125, the provision of PD No. 242 notwithstanding. It then made a categorical pronouncement that RA No. 1125 (the law creating the CTA), which is a special law, prevails over PD No. 242, *viz.:*

> "Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect Rep. Act No. 1125. Rep. Act No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. **Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and instrumentalities**, including government-owned and controlled corporations, **remain in the exclusive appellate jurisdiction of the CTA**. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant."

In *PNOC,* the Supreme Court went on to clarify that even if PD No. 242 is made to prevail over RA No. 1125, its provisions may not be applied as the dispute involved is **not solely an intra-governmental controversy**. The pertinent pronouncement of the Supreme Court *En Banc* reads:

> "Even if, for the sake of argument, that P.D. No. 242 should prevail over Rep. Act No. 1125, the

[4] G.R. No. 86625, December 22, 1981.

> present dispute would still not be covered by P.D. No. 242. Section 1 of P.D. No. 242 explicitly provides that only disputes, claims and controversies, ***solely*** between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices or agencies, as well as government-owned and controlled corporations, shall be administratively settled or adjudicated. While the BIR is obviously a government bureau, and both PNOC and PNB are government-owned and controlled corporations, **respondent Savellano is a private citizen**. His standing in the controversy could not be lightly brushed aside. It was private respondent Savellano who gave the BIR the information that resulted in the investigation of PNOC and PNB; who requested the BIR Commissioner to reconsider the compromise agreement in question; and who initiated CTA Case No. 4249 by filing a Petition for Review."

In **2016**, the First Division of the Supreme Court, in ***Commissioner of Internal Revenue vs. Secretary of Justice and Philippine Amusement and Gaming Corporation***[5] ***("PAGCOR")***, reiterated and applied the doctrine laid down in *PNOC* as it held that the Secretary of Justice is bereft of jurisdiction in reviewing the disputed tax assessments issued by the CIR against the Philippine Amusement and Gaming Corporation (PAGCOR).

Under Section 4 (3) of Article VIII of the 1987 Constitution, the doctrine enunciated by the Supreme Court *En Banc* in *PNOC* could only be modified or reversed by a subsequent decision of the Supreme Court *En Banc.*[6]

As *PNOC* - - the case cited in the Dissenting Opinion of Honorable Associate Justice Maria Rowena Modesto-San Pedro - - **has been overturned by the Supreme Court *En Banc* in *PSALM*, this Court is left with no recourse but to apply *PSALM* in the present case.**

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

[6] "ARTICLE VIII
JUDICIAL DEPARTMENT
xxx xxx xxx
(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: *Provided*, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc."

In *PSALM,* the Supreme Court *En Banc* is categorical in declaring that the resolution of **ALL** disputes solely between departments, bureaus, offices, agencies and instrumentalities of the National Government (including those between the BIR and PSALM/NPC) shall be **administratively settled** or adjudicated by the Secretary of Justice. The pertinent portions of the Supreme Court's disquisition read:

> "Xxx, 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. **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.**
>
> xxx xxx xxx
>
> Xxx. 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 xxx xxx.
>
> 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.**

xxx xxx xxx

Xxx since this case is a dispute **solely** 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.

It is only proper that intra-governmental disputes be settled administratively since the **opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision.**

xxx xxx xxx

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.**

xxx xxx xxx

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."

The Supreme Court *En Banc* also distinguished *PSALM* from *PNOC* by emphasizing that the dispute in *PSALM* is **solely** between a bureau and two (2) GOCCs while the controversy in *PNOC* involves a private citizen, *viz.:*

"This case is different from the case of *Philippine National Oil Company v. Court of Appeals,* (PNOC v. CA) which involves not only the BIR (a government bureau) and the PNOC and PNB (both government owned or controlled corporations), but also respondent Tirso Savellano, **a private citizen**. Clearly, PD 242 is not applicable to the case of PNOC v. CA. Even the *ponencia* in *PNOC v.* CA

> stated that the dispute in that case is not covered by PD 242 xxx."

In rendering *PSALM,* the Supreme Court *En Banc* was mindful of its earlier pronouncement in *PNOC* that the CTA has jurisdiction over intra-governmental disputes, the provisions of PD No. 242 notwithstanding. **Yet, the Supreme Court *En Banc,* after reviewing its ruling in *PNOC,* found sufficient basis to modify the doctrine laid down therein and plainly stated in *PSALM* that jurisdiction over intra-governmental disputes shall be governed by PD No. 242.**

Jurisdiction is vested by law. Since the Supreme Court has reconciled and interpreted the provisions of PD No. 242 and RA No. 1125, as amended, and declared in *PSALM,* in no uncertain terms, that all controversies involving government offices, bureaus, agencies and instrumentalities, including GOCCs fall within the initial jurisdiction of the Department of Justice (DOJ) - - such interpretation must be respected by all courts.

I am not unaware that in the following cases, cited by Honorable Associate Justice Maria Rowena Modesto-San Pedro in her Dissenting Opinion, the jurisdiction of the CTA was not disputed, albeit the controversies therein involved government-owned and controlled corporations and the Bureau of Internal Revenue: (i) ***Philippine Amusement and Gaming Corporation vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation,***[7] where the Supreme Court remanded the case to the CTA for the determination of the final amount to be paid by PAGCOR; (ii) ***Bases Conversion and Development Authority vs. Commissioner of Internal Revenue,***[8] where the Supreme Court remanded the case to the CTA for further proceedings regarding Bases Conversion and Development Authority's claim for refund of Creditable Withholding Tax; and, (iii) ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue,***[9] where the Supreme Court granted PSALM's petition and reversed and set aside the decision of the CTA which found PSALM liable to pay deficiency value-added tax for the taxable year 2008, inclusive of the deficiency interest and delinquency interest.

In ***Commissioner of Internal Revenue vs. San Roque Power Corporation / Taganito Mining Corporation vs. Commissioner of***

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[7] G.R. No. 210689 and G.R. Nos. 210704 & 210725, November 22, 2017.
[8] G.R. No. 205925, June 20, 2018.
[9] G.R. No. 226556, July 3, 2019.

Internal Revenue / Philex Mining Corporation vs. Commissioner of Internal Revenue,[10] the Supreme Court was categorical in holding that an issue which was not passed upon has no value as precedent. Thus, the cited cases may not be considered as doctrine that modifies the principle laid down in *PSALM* - - the issue on the proper interpretation of PD No. 242 vis-à-vis jurisdiction of CTA not having been raised and presented before the Court. Said the Supreme Court:

> "**Any issue, whether raised or not by the parties, *but not passed upon by the Court,* does not have any value as precedent**. As this Court has explained as early as 1926:
>
> > "It is contended, however, that the question before us was answered and resolved against the contention of the appellant in the case of *Bautista vs. Fajardo* (38 Phil. 624). In that case no question was raised nor was it even suggested that said section 216 did not apply to a public officer. That question was not discussed nor referred to by any of the parties interested in that case. It has been frequently decided that the fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity, where that question is squarely and properly raised and presented. **Where a question passes the Court *sub silentio,* the case in which the question was so passed is not binding on the Court *(McGirr vs. Hamilton and Abreu,* 30 Phil. 563), nor should it be considered as a precedent.** *(U.S. vs. Noriega and Tobias,* 31 Phil. 310; *Chicote vs. Acasio,* 31 Phil. 401; *U.S. vs. More,* 3 Cranch [U.S.] 159, 172; *U.S. vs. Sanges,* 144 U.S. 310, 319; *Cross vs. Burke,* 146 U.S. 82.) For the reasons given in the case of *McGirr vs. Hamilton and Abreu,* supra, the decision in the case of *Bautista vs. Fajardo,* supra, can have no binding force in the interpretation of the question presented here."

Parenthetically, *PSALM* remains the jurisprudence that categorically settled the jurisdiction of the DOJ on *intra-governmental disputes or controversies,* including those between the BIR and other government agencies.

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[10] G.R. Nos. 187485, 196113 and 197156, February 12, 2013

Unless and until modified by the Supreme Court *En Banc,* the interpretation of PD No. 242 in *PSALM* should be applied in determining the proper forum with jurisdiction to resolve disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government.

Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[11] Any pronouncement made by the Supreme Court in its judicial decisions becomes the law of the land.[12] Adherence to the principle of *stare decisis et non quieta movere* is mandated for all lower courts, and as such this Court should follow suit and apply the doctrine laid down in *PSALM.*

Since petitioner is a department and respondent is a bureau of the National Government, PD No. 242 applies. Hence, the Department of Justice has initial jurisdiction over their case.

All told, I **VOTE** *(i)* to **DENY** the Department of Energy's Petition for Review for lack of merit and *(ii)* to **AFFIRM** the assailed Resolutions dated November 8, 2019 and January 30, 2020 of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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[11] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003.

[12] Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines., Civil Code of the Philippines.