REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CLARK DEVELOPMENT CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE ROMEO D. LUMAGUI, JR.,
Respondent.

CTA Case No. 11303

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:
MAR 01 2024 9:50 a.m.

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RESOLUTION

On January 11, 2024, this Court directed petitioner to submit the following: (1) Names of its witnesses, summary of their testimonies and their judicial affidavits; (2) List of documentary and object evidence in support of its allegations in its Petition for Review; and (3) A compliant Verification and Certification Against Forum Shopping.

On February 19, 2024, petitioner filed its **Compliance** to the Court's order. However, upon evaluation of the submitted Verification and Certification Against Forum Shopping, it failed to state that "the allegations in the pleading are true and correct based on his or her personal knowledge" as required under Section 4, Rule 7 of the Revised Rules of Court, as amended. Hence, the submitted Verification and Certification Against Forum Shopping is again not compliant.

Section 3, Rule 17 of the Revised Rules of Court, as amended, provides that:

> "Section 3. *Dismissal due to fault of plaintiff.* – **If**, for no justifiable cause, **the plaintiff fails** to appear on the date of the presentation of his or her evidence in chief on the complaint, or to prosecute his or her action for an unreasonable length of time, or **to comply with** these Rules or **any order of the court**, **the complaint may be dismissed**

> upon motion of the defendant or **upon the court's own motion**, without prejudice to the right of the defendant to prosecute his or her counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court." (*Emphasis supplied*)

Furthermore, upon closer look at petitioner's averment in its Petition for Review, it showed that the Court has no jurisdiction on the instant petition.

First, petitioner alleges that it is a "government-owned and-controlled corporation (GOCC)"[1] while respondent Commissioner of Internal Revenue Romeo D. Lumagui, Jr is the head of the Bureau of Internal Revenue (BIR), an office or bureau of the national government. Thus, the case is solely between a GOCC and the BIR which is a government agency.

Sections 1, 2, and 3 of Presidential Decree (PD) No. 242[2] provide that:

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

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[1] Docket, CTA Case No. 11303, 1st Paragraph, The Parties, Petition for Review, p. 8.
[2] PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES.

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 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)."

These provisions, however, were amended by Sections 66, 67, and 68 of Chapter 14, Book 4, Executive Order (EO) No. 292[3] or the Administrative Code of 1987, which provide that:

"CHAPTER 14
Controversies Among Government Offices and Corporations

SECTION 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.

SECTION 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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[3] ADMINISTRATIVE CODE OF 1987.

> SECTION 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**:
>
> > (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
> >
> > (2) The Secretary of Justice, in all other cases not falling under paragraph (1)." (*Emphasis supplied*)

As shown above, if the parties in dispute, claims or controversies involve solely between or among the departments, bureaus, offices, agencies, instrumentalities of the National Government and a GOCC, the case should be referred to the Secretary of Justice pursuant to PD No. 242. However, in the advent of EO No. 292, the case should be referred to the Solicitor General, if there are questions of facts.

Second, in *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*,[4] the Supreme Court *En Banc* ruled that in disputes and claims solely between government agencies and offices, including GOCCs, the administrative procedure in Sections 2 and 3 of PD No. 242, or the act "Prescribing the Procedure for Administrative Settlement or Adjudication of Disputes, Claims and Controversies Between or Among Government Offices, Agencies and Instrumentalities, including Government-Owned or Controlled Corporations, and for other purposes," should be followed. The significant portions of the Supreme Court's extensive discussion are quoted as follows:

> "We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists.
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> However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government-owned**

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

corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants. There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. Sections 1, 2, and 3 of PD 242 read:

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The use of the word 'shall' in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word 'shall' means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under 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. xxx

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The second paragraph of Section 4 of the 1997 NIRC, providing for the exclusive appellate jurisdiction of the CTA as regards the CIR's decisions 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, is in conflict with PD 242. Under 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.

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**. xxx

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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 intragovernmental 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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> xxx xxx xxx
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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. xxx"

Based on the foregoing, the Supreme Court *En Banc* has reconciled and interpreted the provisions of PD No. 242 and declared in no uncertain terms, that all controversies involving government offices, bureaus, agencies and instrumentalities, including GOCCs fall within the initial jurisdiction of the Secretary of Justice or the Solicitor General under Sections 67 and 68, Chapter 14, Book IV of EO No. 292, otherwise known as the "Administrative Code of 1987", and such interpretation must be respected by all courts.

The only exception to the application of Sections 1, 2, and 3 of PD No. 242, as amended by Sections 66, 67, and 68 of Chapter 14, Book 4, EO No. 292, is when the parties involved in disputes are Congress, the Supreme Court, the Constitutional Commissions, and local governments as clarified by the Highest Court in the recent case of *Commissioner of Internal Revenue v. Commissions on Elections, et al.*,[5] to wit:

> "Indeed, PD No. 242 is not the law applicable for the settlement or adjudication of disputes, claims, and controversies between a constitutional office, like the COMELEC, and a government office, agency, or bureau, such as the BIR. Section 1 of PD No. 242 specifically **excluded** constitutional offices or agencies in its coverage. The exclusion is reiterated in the Department of Justice Administrative Order No. 121 implementing PD No. 242. Furthermore, Chapter 14, Book IV of EO No. 292, which incorporated the dispute resolution procedure in PD No. 242, states that the manner of settling or adjudicating disputes, claims, or controversies provided therein shall "**not apply**" to the constitutional commissions. Accordingly, the COMELEC, being a constitutional office independent from the three

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[5] G.R, Nos. 244155 and 247508, May 11, 2021.

> branches of the government, is not required to go through the procedure prescribed in PD No. 242 and EO No. 292."

Likewise, in the recent case of the *Department of Energy v. Court of Tax Appeals*,[6] the Supreme Court ruled that the disputes under PD No. 242 are not only confined to questions arising out of contracts or agreements among government agencies but on all disputes, claims, and controversies as long as the same are solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, to wit:

> "A reading of *PSALM v. CIR* clearly demonstrates that the decision was not merely hinged on the existence of the MOA among the government agencies concerned, but moreso on the very fact that there is a djspute among two government-owned or -controlled corporations, PSALM and the NPC, on the one hand, and a national government office, the BIR, on the other.
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> The *CTA En Banc* in the assailed Resolution correctly observed that the Court "was categorical in ruling that when the law says 'all disputes, claims and controversies solely among government agencies, the law means all, without exception."[37] So long as such dispute arises from any of the following - "the interpretation and application of statutes, contracts or agreements" - the same falls under the administrative settlement proceedings directed by P.D. No. 242.
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> Through *PSALM v. CIR*, the Court harmonized conflicting laws, provided guidelines for when disputes ought to be referred to administrative settlement, and clarified the appropriate arbiter based on the nature of the issues. Thus, the decision was not limited to the same scenario which brought about the action, but was to be instructive for future scenarios conforming with the parameters drawn by the Court.
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> **To hold that *PSALM v. CIR* is applicable only to disputes, claims, or controversies, arising out of contracts or agreements among government agencies, to the exclusion of the other sources of disputes enumerated in Section 1 of P.D. No. 242, <u>is to adopt a dangerously narrow interpretation</u>**." (*Emphasis and underscoring ours)*

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[6] G.R. No. 260912, August 17, 2022.

Thus, it is very clear in the instant petition that this Court has no jurisdiction, hence, the same should be outrightly dismissed as held in *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*:[7]

> "It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.
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> The CTA, even if vested with special jurisdiction, is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority. Relative thereto, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim."

WHEREFORE, premises considered, petitioner's partial *Compliance* is hereby **NOTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(on official business)
HENRY S. ANGELES
Associate Justice

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[7] G.R. No. 185666, February 04, 2015.