REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DUTY FREE PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9640

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
MAR 02 2018 4:05 PM

x- x

RESOLUTION

The Court granted petitioner a period of thirty (30) days from January 18, 2018 within which to file its Memorandum on whether the instant case should be dismissed in light of the recent Supreme Court *En Banc* ruling in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue* (PSALM case)[1].[2]

In its Memorandum, petitioner discusses that the instant petition should not be dismissed on the ground that the factual antecedents of the PSALM case are different from the instant case. Petitioner argues that in PSALM, the entities therein agreed to submit the dispute to the Department of Justice (DOJ); that the jurisdiction of the Court of Tax Appeals (CTA) over the Commissioner of Internal Revenue (CIR)'s decisions on disputed assessments is very clear under Republic Act No. 1125, as amended; and, that the instant case was filed before the promulgation of the PSALM case.

In the PSALM case, the Supreme Court *En Banc* ruled that the administrative procedure in PD 242 (now in the Administrative Code of 1987) should be followed in disputes and claims solely between government agencies and offices,

---

[1] G.R. No. 198146, August 8, 2017.
[2] Docket, Order dated January 18, 2018, p. 259.

including government-owned or controlled corporations. Thus, it explained:

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

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.** 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 xxx xxx

xxx xxx xxx

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 xxx xxx
>
> 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**. 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.
>
> xxx xxx xxx
>
> 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. (*Emphasis and italics in the original, citations omitted*)

In the instant case, petitioner Duty Free Philippines Corporation is a government-owned and controlled corporation[3] while respondent CIR represents the Bureau of Internal Revenue, another government agency. Clearly, this is a dispute solely between two government entities, and as such, following the ruling in the PSALM case, this Court has no jurisdiction.

While it is true that the instant petition was filed on August 4, 2017, or before the promulgation of the PSALM case

---

[3] Docket, Petition for Review, p. 11.

on August 8, 2017, this Court cannot insist on exercising jurisdiction over it. This was squarely addressed by the Supreme Court in *Commissioner of Internal Revenue v. Secretary of Justice and Philippine Amusement and Gaming Corporation* (PAGCOR case),[4] as follows:

> PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004. *Philippine National Oil Company v. Court of Appeals* was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country, and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. (*Underscoring supplied*)

WHEREFORE, based on the foregoing, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

Let the case be referred to the Secretary of Justice pursuant to the rulings in the PSALM and PAGCOR cases.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

---

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