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

***SECOND DIVISION***

**PHILIPPINE MINING DEVELOPMENT CORPORATION,**
*Petitioner,*

-*versus*-

**THE COMMISSIONER OF INTERNAL REVENUE and THE OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE, in their official capacities as officers of the Bureau of Internal Revenue,**
*Respondents.*

**CTA Case No. 9292**

Members:

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

Promulgated:

APR 06 2018 4:27 p.m.

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# DECISION

**MANAHAN, *J.:***

This involves the Petition for Review filed by Philippine Mining Development Corporation seeking to set aside and to declare null and void the assessment for deficiency income tax for taxable year 2006. Petitioner also prays that the warrant of distraint and levy dated August 17, 2011, and the Bureau of Internal Reveue (BIR)'s denial of petitioner's motion for reinvestigation be set aside and declared null and void.

## FACTS

Petitioner Philippine Mining Development Corporation (PMDC) is a government-owned and controlled corporation (GOCC), with business address at 2904 B, West Tower, Phil. Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City.[1]

Respondents Commissioner of Internal Revenue (CIR) and OIC-Assistant Commissioner, Large Taxpayers Service are impleaded in their official capacities as the Head of the BIR,

[1] Docket, CTA Case No. 9292, Petition for Review (PFR), p. 10.

respectively. Respondents are authorized and tasked under existing laws and their implementing rules and regulations to perform the duties of their respective offices, including among others, the power to act upon protests on assessments or on disputed assessments issued by its office or through its authorized representative.[2]

PMDC, formerly Natural Resources Mining Development Corporation, was incorporated on July 4, 2003 primarily to conduct and carry on the business of exploring, developing, mining, concentrating, converting, smelting, treating and otherwise developing, producing and dealing in gold, silver, copper, iron and any and all kinds of minerals, mineral deposits, substances and mineral resource.[3]

In the April 23, 2008 Letter[4] of then BIR Commissioner Lilian B. Hefti, PMDC was informed that it is considered as a large taxpayer and under the jurisdiction of Revenue District Office (RDO) 121.[5]

On September 26, 2008, PMDC filed its Application for Registration Information Update (BIR Form no. 1905)[6] to change its registered address from 5/F PNOC-EDC Bldg 5, Merrit Road, Fort Bonifacio, Makati City to 2904B PSE Centre, West Tower, Exchange Road, Pasig City.

On January 4, 2010, PMDC received the September 18, 2009 Preliminary Assessment Notice (PAN)[7] relative to the alleged deficiencies in VAT and income tax for taxable year 2006.[8] Said PAN was still addressed to PMDC's old address.

The BIR issued a Final Assessment Notice (FAN)[9] dated January 22, 2010 on the alleged deficiency VAT and IT.[10] The basic deficiency VAT amounted to Php1,356,588.37, while the basic deficiency income tax amounted to Php3,956,716.07 which, when totaled with the surcharge and interests, am

[2] Docket, PFR, p. 11.
[3] Docket, PFR, pp. 11-12.
[4] Docket, Exhibit "P-7", pp. 269-271.
[5] Docket, PFR, p. 12.
[6] Docket, Exhibit "P-6", pp. 266-267.
[7] Docket, Exhibit "P-1", pp. 259-261.
[8] Docket, PFR, p. 12.
[9] BIR Records, Exhibit "P-5", p. 74.
[10] Docket, PFR, p. 12.

amounted to Php11,048,658.60. Said FAN was also addressed to PMDC's old address.

On February 8, 2010, through a letter[11] addressed to Mr. Nelson M. Aspe, Deputy Commissioner – Operations Group, PMDC requested that it be provided a copy of the BIR's matching/reconciliation data sheet so that PMDC can verify the claim for VAT deficiency.[12]

On November 22, 2010, PMDC received the October 27, 2010 Preliminary Collection Letter (PCL)[13] issued by Revenue District Office No. (RDO) 50, Revenue Region 8, for the alleged tax deficiency.[14] On November 26, 2010, PMDC allegedly received the FAN, as stated in its December 1, 2010 letter[15] to Revenue Region 8 Regional Director Mr. Jaime Santiago. In the said letter, PMDC reiterated its change of address, and that details of the assessment have not yet been provided by the LN Task Force.

On May 26, 2011, PMDC received the April 27, 2011 PCL[16] issued by the LT-Collection and Enforcement Division, again demanding payment of the alleged tax deficiencies totaling Php11,048,658.60. PMDC replied to this PCL through its Letter[17] dated June 2, 2011 where it reiterated that PMDC has incurred a net loss as shown in its Annual Audit Report for calendar year 2006; that it requests for reinvestigation of the BIR findings on its alleged deficiency income tax; and, that it is willing to pay the VAT deficiency of Php2,193,151.20 with an additional request to waive the surcharge amounting to Php678,294.00.[18] On June 13, 2011, PMDC paid deficiency VAT amounting to Php2,193,151.20.[19] On October 9, 2014, PMDC paid the surcharge amounting to Php678,294.19.[20]

On June 10, 2011, PMDC received the Final Notice Before Seizure dated May 24, 2011.[21] On July 7, 2011, PMDC wrote its reply[22] to the Final Notice Before Seizure seeking the removal of

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[11] Docket, Exhibit "P-2", p. 262.
[12] Docket, PFR, p. 13.
[13] Docket, Exhibit "P-3", p. 263.
[14] Docket, PFR, p. 13.
[15] Docket, Exhibit "P-4", pp.264-265.
[16] Docket, Exhibit "P-9", p. 272.
[17] Docket, Exhibit "P-10", p. 273.
[18] Docket, PFR, p. 14.
[19] Docket, Exhibits "P-21" and "P-22", pp. 286-288.
[20] Docket, Exhibits "P-23" and "P-24", pp. 289-291.
[21] Docket, Exhibit "P-11", p. 274.
[22] Docket, Exhibit "P-13", pp. 276-277.

the deficiency income tax assessment considering that it has no unreported revenues for year 2006.[23]

On July 25, 2011, PMDC received the July 13, 2011 Letter[24] from the Assistant Commissioner, Large Taxpayers Service, where the BIR informed PMDC of the alleged basis of the computation of the tax deficiencies.[25]

On August 27, 2011, the BIR issued a Warrant of Distraint and Levy (WDL)[26].[27] On March 22, 2012, the BIR denied PMDC's request for suspension of the implementation of the WDL stating that PMDC failed to file its protest and that the assessment has become final and executory.[28]

On April 30, 2012, PMDC paid 40% of the basic assessed tax amounting to Php1,582,686.43.[29] On May 3, 2012, PMDC filed its Application for Compromise[30] on the ground of doubtful validity of the assessment.[31] On February 11, 2016, PMDC received the Notice of Denial[32] dated January 28, 2016, informing it of the National Evaluation Board (NEB) disapproval of its application for compromise.[33]

Hence, PMDC filed the subject Petition for Review[34] on March 14, 2016.

The CIR filed his Answer[35] on April 12, 2016, and his Pre-Trial Brief[36] on April 25, 2016. PMDC filed its Pre-Trial Brief[37] on May 6, 2016. The parties filed their Joint Stipulation of Facts and Issues (JSFI)[38] on May 31, 2016, which the Court approved and adopted in the Pre-Trial Order[39] dated July 27, 2016. *om*

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[23] Docket, PFR, p. 14.
[24] Docket, Exhibit "P-12", p. 275.
[25] Docket, PFR, p. 14.
[26] BIR Records, Exhibit "P-14", p. 148.
[27] Docket, PFR, p. 14.
[28] BIR Records, Exhibit "P-15", p. 201.
[29] Docket, Exhibits "P-18" and "P-19", pp. 283-284.
[30] Docket, Exhibit "P-16", pp. 278-282.
[31] Docket, PFR, p. 15.
[32] Docket, Exhibit "P-20", p. 285.
[33] Docket, PFR, p. 15.
[34] Docket, pp. 10-26, with annexes.
[35] Docket, pp. 84-94.
[36] Docket, pp. 95-101.
[37] Docket, pp. 101-112.
[38] Docket, pp. 116-120.
[39] Docket, pp. 131-135.

During trial, PMDC presented its lone witness Ms. Mary Ann P. Zarcilla.[40] PMDC filed its Formal Offer of Evidence (FOE)[41] on September 5, 2016, which the Court resolved on October 20, 2016,[42] thereby admitting all of petitioner's evidence.

After several resettings,[43] respondents presented their witness, Revenue Officer Joriz Saldajeno[44] on February 15, 2017. On August 30, 2017, respondents' counsel manifested that there were no other witnesses to be presented.[45] Respondents orally offered their evidence on even date, which the Court resolved thereby admitting respondents' evidence.[46] The parties were granted a period of thirty (30) days within which to submit their respective memoranda.[47]

PMDC filed its Memorandum[48] on September 29, 2017, while respondents filed their Memorandum[49] on October 19, 2017, within the extended period granted.[50] Considering the foregoing, the case was deemed submitted for decision on October 26, 2017.[51]

Hence, this decision.

## ISSUES[52]

Petitioner presents the following issues:

1. Whether petitioner is precluded from availing the remedy of appeal with the Court of Tax Appeals.

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[40] Docket, Exhibit "P-27" Judicial Affidavit, pp. 145-160; Minutes of Hearing on August 3, 2016, p. 246.
[41] Docket, pp. 251-258.
[42] Docket, Resolution, pp. 341-342.
[43] Docket, Order dated November 3, 2016, p. 348; and Order dated January 19, 2017, p. 360.
[44] Docket, Exhibit "R-14" Judicial Affidavit, pp. 353-355; Minutes of Hearing on February 15, 2017, p. 361.
[45] Docket, Minutes of Hearing on August 30, 2017, pp. 295-296; Order dated August 30, 2017, pp. 297-298.
[46] Docket, Minutes of Hearing on August 30, 2017, pp. 295-296; Order dated August 30, 2017, pp. 297-298.
[47] Docket, Minutes of Hearing on August 30, 2017, pp. 295-296; Order dated August 30, 2017, pp. 297-298.
[48] Docket, pp. 306-321.
[49] Docket, pp. 327-338.
[50] Docket, Order dated October 3, 2017, p. 326.
[51] Docket, Resolution dated October 26, 2017, p. 339.
[52] Docket, JSFI, p. 117.

2. Whether respondent's deficiency income tax assessment is with factual and legal basis.

On the other hand, respondent submits the following issues:

1. Whether the assessment has become final and executory and demandable for petitioner's failure to timely file its protest against the assessment.

2. Whether the Honorable Court has jurisdiction to act on the instant petition for review.

3. Whether petitioner is liable for deficiency income of Php6,594,526.78 for taxable year 2006.

**Petitioner's Arguments**[53]

Petitioner argues that it did not receive the FAN because the BIR sent it to the wrong address; that PMDC notified the BIR of its change of address; that BIR failed to comply with due process as it was deprived of the chance to challenge the said assessment; and, that the assessment could not become final and executory since PMDC did not receive the FAN.

Petitioner further argues that the assessment of deficiency income tax is bereft of factual and legal bases; that according to the Commission on Audit (COA) Audit Report for 2006, PMDC incurred a net loss of Php49,069,487.00; that PMDC has yet to start operating its mining business in 2006; and, that PMDC has no revenue generated for year 2006 and was operating on a net loss.

**Respondents' Counter-Arguments**[54]

Respondents argue that the Court has no jurisdiction considering that the assessment has already become final, executory and demandable; that the Amended PAN dated December 18, 2009 was sent to its previous business address at Unit 3602 Antel Global Center, Doña Julia Vargas Avenue, Ortigas Center, Pasic City, which petitioner admitted having received; that in petitioners February 8, 2012 letter-reply to the

53 Docket, PFR, pp. 16-20; Memorandum, pp. 311-320.
54 Docket, Answer, pp. 85-91; Memorandum pp. 328-335.

FAN addressed to Deputy Commissioner Nelson Aspe, it requested to be provided with a copy of the BIR's Matching/Reconciliation Data Sheet; as such, petitioner's contention that it did not receive the FAN is untenable and has no leg to stand on. Respondents also argue that petitioner only had thirty (30) days from receipt of the FAN within which to file a protest.

Respondents also state that the Court has no jurisdiction over the petition considering that there is no disputed assessment since the assessments have become final, executory and demandable; that the denial of an application for compromise is not the decision contemplated by law; and that petitioner cannot indirectly attack the denial of the application for compromise since the acceptance or denial of a compromise settlement is a discretionary power.

Respondents state that the assessments for deficiency income tax and VAT and corresponding compromise penalty have bases both in fact and in law and that assessments enjoy the presumption of correctness.

In their memorandum, respondents also state that the Court has no jurisdiction over the instant case and that petitioner should have appealed to the Department of Justice following the ruling of the Supreme Court in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue.*[55]

## RULING OF THE COURT

The petition should be dismissed for lack of jurisdiction.

Under the Revised Rules of the Court of Tax Appeals (RRCTA), the Court in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the CIR in cases involving disputed assessments.[56] Said appeal may be availed of by filing a petition for review with the CTA within thirty days after receipt of a copy of such decision or ruling, or expiration

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[55] G.R. No. 198146, August 8, 2017.
[56] Rule 4 Jurisdiction of the Court
Sec. 3. Cases within the jurisdiction of the Court in Divisions. –
The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, xxx.

of the period fixed by law for the CIR to act on the disputed assessments.[57]

However, the Supreme Court *En Banc* in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue* (*PSALM case*)[58] ruled that in disputes and claims solely between government agencies and offices, including GOCCs, the administrative procedure in Sections 2 and 3 of Presidential Decree (PD) No. 242 should be followed. A part of the Supreme Court's extensive discussion is quoted below:

> 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.
>
> 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 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

[57] Rule 8 Procedure in Civil Cases
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 xxx 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. xxx

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

cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. xxx xxx xxx

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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 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 corporation, 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 decision on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC, 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.
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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 xxx xxx (*Emphasis and italics in the original, citations omitted*)

Since the Supreme Court has reconciled and interpreted the provisions of PD No. 242 and Republic Act (RA) No. 1125,[59] as amended, and 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.**[60] Unless and until modified by the Supreme Court *En Banc*, the interpretation of PD No. 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.[61]

In the instant case, petitioner Philippine Mining Development Corporation is a GOCC,[62] while respondent CIR represents the Bureau of Internal Revenue, another government agency. Clearly, this is a dispute solely between two government

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[59] An Act Creating the Court of Tax Appeals.
[60] *Metropolitan Waterworks and Sewerage System (MWSS) v. Commissioner of Internal Revenue*, CTA Case No. 9599, February 22, 2018.
[61] *Id.*
[62] Docket, PFR, p. 10.

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 March 4, 2016, or before the promulgation of the PSALM case on August 8, 2017, this Court cannot insist on exercising jurisdiction over it. This was squarely addressed by the Supreme Court in *Commissioner of Internal Revenue v. Secretary of Justice and Philippine Amusement and Gaming Corporation* (PAGCOR case),[63] as follows:

> Despite the shift in the construction of P.D. No. 242 in relation to R.A. No. 1125, the Secretary of Justice still resolved PAGCOR's petitions on the merits, stating that:
>
> > While this ruling (DBP) has been superseded by the ruling in *Philippine National Oil Company vs. CA*, in view of the prospective application of the PNOC ruling, we (the DOJ) are of the view that this Office can continue to assume jurisdiction over this case which was filed and has been pending with this Office since January 5, 2004 and rule on the merits of the case.
>
> We disagree with the action of the Secretary of Justice.
>
> 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. Therein lay the grave abuse of discretion amounting to lack or excess of

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

> jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings. (*Underscoring supplied, citations omitted*)

Applying the doctrine laid down in the PAGCOR case, when an office (as the DOJ) assumes jurisdiction over a case at the time when the rules vest jurisdiction upon it, yet, during the pendency of such action, a new doctrine divests the office of the jurisdiction it originally exercised, the proper and prudent course of action to take would be to refer the case to the appropriate body to which jurisdiction has been subsequently vested.[64] Thus, this Court, having had ample opportunity to abide by the ruling in the PSALM case, has no jurisdiction over the instant petition filed by PMDC.

**WHEREFORE**, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

Let a copy of this Decision be furnished to the Secretary of Justice.

**SO ORDERED.**

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

Juanito C. Castañeda, Jr.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

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

## ATTESTATION

I attest 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's Division.

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

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice