REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION,
Respondent.

CTA EB NO. 1618
(CTA Case No. 8587)

x-------------------------------------x

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1619
(CTA Case No. 8587)

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

OCT 01 2018
4:21 p.m.

x- x

DECISION

FABON-VICTORINO, J.:

For determination are the consolidated *Petitions for Review* filed on different dates by the Commissioner of Internal Revenue (CIR) and Power Sector Assets and

Liabilities Management Corporation (PSALM) both assailing the Decision[1] dated September 19, 2016 and the subsequent Resolution[2] dated March 8, 2017, rendered by the Court in Division in CTA Case No. 8587 entitled *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue.*

In his *Petition for Review*[3], the CIR prays that the assailed Decision and Resolution be reconsidered and set aside, and a new one rendered ordering PSALM Corporation to pay the amount of ₱4,227,839,623.78, representing the 20% deficiency and delinquency interests for late payment until fully paid pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

On the other hand, PSALM Corporation, in its own *Petition for Review*[4] prays that judgment be rendered finding that its privatization activities and transactions incidental thereto are not subject to Value-Added Tax (VAT).

THE FACTS AND THE PROCEEDINGS

The facts, as culled from the record, are as follows:

The CIR is the head of the Bureau of Internal Revenue (BIR), authorized to perform the duties of his office, including, among others, the power to decide disputed assessments or other charges and penalties imposed in relation thereto pursuant to the provisions of the NIRC of 1997, as amended. He holds office at BIR National Office Building, BIR Road, Diliman, Quezon City.

The other party, PSALM Corporation, is a government entity created under Section 49 of Republic Act (R.A.) No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA), with office at the 7th Floor, Bankmer Building, 6756 Ayala Avenue, Makati City.

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[1] CTA EB No. 1618 Docket, pp. 18-54.
[2] CTA EB No. 1618 Docket, pp. 55-66.
[3] CTA EB No. 1618 Docket, pp. 7-15.
[4] CTA EB No. 1619 Docket, pp. 1-15.

PSALM Corporation is mandated "to take ownership of all existing National Power Corporation (NPC) generation assets, liabilities, Independent Power Producer (IPP) contracts, real estate and all other disposable assets" and with the purpose and objective to "manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner."

On July 23, 2012, PSALM Corporation received a Formal Letter of Demand (FLD) with Final Assessment Notice (FAN), assessing it of alleged deficiency VAT liability for the taxable year (TY) ending December 31, 2009 in the total amount of ₱9,663,536,901.05.

On August 22, 2012, PSALM Corporation protested the said assessment requesting that the FAN be withdrawn and cancelled.

On November 15, 2012, PSALM Corporation received from the BIR, the Final Decision on Disputed Assessment (FDDA) specifically stating that it was still liable to pay deficiency VAT in the reduced amount of ₱7,642,925,210.78.

On December 14, 2012, PSALM Corporation filed with the Court in Division a Petition for Review challenging the FDDA docketed as CTA Case No. 8587.

In his Answer, the CIR argued that with the repeal of NPC's exemption from VAT, all transactions entered into or undertaken either by it and/or its successors-in-interest, PSALM Corporation included, involving transfer of or disposal of NPC's assets consisting of real properties, power generation plants and other transferrable assets which were mandated to be sold or disposed in accordance with the EPIRA Law, as well as their authorized activities, shall be subject to the 10% VAT beginning November 1, 2005 and 12% beginning February 1, 2006. Further, respondent averred that contrary to PSALM Corporation's stand that its transactions related to privatization activities were not in the course of trade or business, hence, not subject to VAT, the definition of the phrase "in the course of trade or business" in Section 105 of NIRC of 1997, as amended, now covers incidental transactions. Therefore, PSALM Corporation's proceeds from sale of generating assets, proceeds from lease, miscellaneous income, receipt of Net Settlement Surplus from Philippine Electricity Market Corporation, sale of stored fuel to PNOC of the bunked gas funded by DOE/BTras, being incidental to its business of privatization of NPC's assets, should be deemed transactions "in the course of trade and business," thus, subject to VAT.

Further, PSALM Corporation's reliance on BIR Ruling No. 20-2002 was misplaced considering all the amendatory laws and jurisprudence which repealed NPC's and its successors-in-interest's VAT exemption. The BIR Rulings are based only on a set of facts as represented by a taxpayer, and made applicable only to the facts and circumstances thereto, in connection with the applicable laws existing as of the date of the ruling but this may not be construed as a grant of tax exemption.

Finally, the CIR justified the assessment he issued against PSALM Corporation on deficiency VAT saying that it was in accordance with law, rules and jurisprudence and was fully substantiated by concrete and convincing evidence. That being the case, it should be presumed *prima facie* correct and made in good faith. The taxpayer has the duty to prove otherwise. However, PSALM Corporation failed in this regard.

Trial ensued and on September 19, 2016, the Court in Division issued the assailed Decision granting PSALM Corporation's *Petition for Review,* in the following manner:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency value-added tax assessment in the amount of ₱7,642,925,210.78 for taxable year 2009 is hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**

Both unconvinced, the CIR and PSALM Corporation filed their *Motion for Reconsideration* and *Partial Motion for Reconsideration* both of which were denied in the assailed Resolution of March 8, 2017 for lack of merit.

Hence, the two (2) *Petitions for Review* separately filed by the CIR and PSALM Corporation docketed as CTA EB No. 1618 and CTA EB No. 1619 were subsequently consolidated in the *Resolution*[5] dated April 21, 2017 pursuant to Section 1, Rule 31 of the Revised Rules of Court.

On July 13, 2017, the Court *En Banc* gave due course to the consolidated *Petitions for Review.* After the parties submitted their respective memoranda[6], the consolidated *Petitions for Review* were submitted for decision on October 4, 2017.[7]

THE ISSUES

PSALM Corporation assigns the following issue for the resolution of the Court:

> THE FIRST DIVISION OF THE HONORABLE COURT ERRED WHEN IT CANCELLED THE ASSESSMENT FOR DEFICIENCY VALUE-ADDED TAX (VAT) IN THE AMOUNT OF P7,642,925,210.78 FOR TAXABLE YEAR 2009 ON THE GROUND THAT RESPONDENT HAS SUFFICIENT INPT TAX CREDITS TO COVER ITS OUTPUT TAX LIABILITY.

On the other hand, the CIR submits the lone issue of:

> WHETHER OR NOT PSALM'S PROCEEDS FROM PRIVATIZATION AND OTHER TRANSACTIONS INCIDENTAL TO SUCH PRIVATIZATION SHOULD BE SUBJECT TO VALUE-ADDED TAX.

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[5] CTA EB No. 1618 Docket, p. 70.
[6] Resolution, CTA EB No. 1618 Docket, pp. 96-97.
[7] Resolution, CTA EB No. 1618 Docket, pp. 171-172.

The parties' arguments in CTA EB No. 1618

The CIR contends that the Court in Division erred when it ruled that PSALM Corporation is not subject to deficiency VAT given that it has sufficient input tax to cover its output tax liability. On the contrary, PSALM Corporation is still liable for deficiency VAT since it carried over a portion of its input tax in the amount of ₱14,009,651,700.16, therefore, only the amount of ₱4,850,906,690.77 input tax can be deducted from its output tax liability. However, since PSALM Corporation have already paid the basic output tax of ₱8,127,574,215.40 as shown in the Special Allotment Release Order (SARO) No. BMB-F-12-0012539 in the amount of ₱4,712,488,628.40 dated June 29, 2012 and ₱3,415,085,587.00 through SARO No. BMB-F-12-0035639 dated December 28, 2012, it is only liable for the penalties and interests as of November 30, 2012 in the amount of ₱4,227,839,623.78.

Further, well-settled is the rule that tax assessments are presumed correct and made in good faith, thus, the taxpayer has the bounden duty to prove otherwise. The failure of the taxpayer to discharge this burden, automatically justifies judicial affirmation of the assessment as in the present case.

PSALM Corporation counters that the issue raised by the CIR in his Petition is violative of due process as it was not raised in the Pre-Trial Order issued by the Court in Division. After the parties defined the issues as stated in the Pre-Trial Order, the CIR could not unilaterally and belatedly claim that it still has to settle the penalties and interests as of November 30, 2012.

As to the issue on payment of compromise penalties, PSALM Corporation points out that compromise penalties cannot be compulsorily imposed to those who do not agree to its imposition since its imposition is based upon mutual agreement or consent. Thus, the amount of compromise penalty alleged by the CIR is an arbitrary imposition or exaction, therefore improper and contradicts the nature of a compromise penalty.

The Parties' arguments in CTA EB No. 1619:

PSALM Corporation claims that the proceeds of its privatization activities and other proceeds incidental to such privatization activities should not be subject to VAT because its privatization of NPC's assets was not conducted in the ordinary course of trade or business. Allegedly, PSALM was created with two-fold mandate, to wit: (a) privatization of NPC's assets, and (b) liability management of NPC's outstanding financial obligations. As the government's conduit to achieve its desired goal, PSALM had to conduct its privatization of NPC's assets to liquidate NPC's liabilities in an optimal manner, which did not necessarily mean the gain secured from the disposal of assets, as found by the Court in Division, but through a set of criteria of financial viability, efficiency of operations and management and operational synergy.

PSALM Corporation also claims that the Court in Division was incorrect in ruling that the enactment of the E-VAT Law rendered its income from its main and incidental activities subject to VAT given that no express mention of the privatization of NPC's assets in the E-VAT Law. Thus, the Court in Division should not have distinguished the sale of generated power (electricity), which was subject to VAT, from sale of generation assets (privatization). The E-VAT Law and BIR Ruling No. 020-2002 dealt with different subject matters with distinct features. The E-VAT Law imposed VAT on the sale of electricity, while BIR Ruling No. 020-2002 addressed the privatization activities of PSALM and not the sale of electricity. Otherwise stated, the law considers sales of electricity by generation companies as transactions made in the ordinary course of business, while the law does not consider sale of generation assets as transactions made in the ordinary course of business. For these reasons, BIR Ruling No. 020-2002 is applicable and not the E-VAT Law.

However, even assuming that the privatization of assets became subject to VAT due to the enactment of the E-VAT Law, the CIR can no longer retract his disquisition in BIR Ruling No. 020-2002 that privatization of assets is considered an isolated transaction and is not conducted in the pursuit of any commercial or profitable activity, including transactions incidental thereto. The CIR is bound by the terms of his own rulings as provided under Section 246 of the NIRC of 1997, as amended, and the taxpayers can rely on said Rulings until and unless specifically and expressly modified or set aside.

For his part, the CIR by way of Comment counter-argues that the Petition filed by PSALM Corporation should be dismissed outright on the ground that the affidavit of service attached to its Petition for Review is defective pursuant to Section 11, Rule 13 of the Rules of Court[8].

THE RULING OF THE COURT *EN BANC*

There are two critical issues in the present appeal, to wit: (a) whether the proceeds from PSALM's privatization activities and other transactions incidental thereto are subject to VAT, and (2) whether the disputed assessment for VAT was correctly cancelled by the Court in Division on the ground that PSALM Corporation had sufficient input tax credits to cover its output tax liability.

However, before addressing the issues raised, the Court *En Banc* finds it proper to first determine the Court's jurisdiction over the present cases.

The CTA is a court of special jurisdiction, hence, it can only take cognizance of matters that are clearly within its jurisdiction.[9] Its jurisdiction is expressly laid down in R.A. No. 1125, as amended by R.A. No. 9282 and R.A. No. 9503.

With respect to the instant cases, Section 7(a)(1) and (2) of R.A. No. 1125, as amended, states that the CTA shall exercise exclusive appellate jurisdiction to review by appeal decisions of and inaction by the CIR in cases involving

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[8] Sec 11, Rule 13 of the Rules of Court states:

"SEC. 11. *Priorities in modes of service and filing.* - Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

[9] *Allied Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010, 611 SCRA 657.

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. Thus, based on the said provisions, the Court has jurisdiction over the instant cases.

However, the Supreme Court *En Banc,* in its recent pronouncement in the case of *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*[10], involving the same parties, categorically 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 (P.D.) 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.

Sections 1 to 3 of Presidential Decree (PD) No. 242 states:

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

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

> consonance with section 83 of the Revised Administrative Code. **His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned**.
>
> Section 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:
>
> > (a) The Solicitor General, with respect to disputes or claims 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).**

From the foregoing, it is clear that the provisions of P.D. No. 242, which took effect on July 9, 1973, apply to 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. And the jurisdiction over the said disputes are either vested in the Solicitor General, the Government Corporate Counsel or the Secretary of Justice, as provided under Sections 67 and 68, Chapter 14, Book IV of Executive Order No. 292, otherwise known as the "Administrative Code of 1987"[11].

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[11] Section 67 and 68, Chapter 14, Book IV of E.O. No. 292 states:

Further, as held in the above-mentioned case of *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue, viz:*

> The primary issue in this case is whether the DOJ Secretary has jurisdiction over OSJ Case No. 2007-3 which involves the resolution of whether the sale of the Pantabangan-Masiway Plant and Magat Plant is subject to VAT.
>
> 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[24] (PD 242), all**

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.

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).

> **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.**
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> 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. xxxx
>
> **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.** (emphases supplied)

With the afore-cited provisions of laws and the recent pronouncement by the Supreme Court *En Banc,* it is plain that the instant case between PSALM Corporation, a GOCC and the BIR, a government bureau, involving the disputed deficiency VAT assessment on PSALM Corporation's proceeds from privatization of NPC's assets, is within the jurisdiction of the Secretary of Justice. Therefore, the Court is bereft of jurisdiction to take cognizance of the present case.

On a final note, jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[12] 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.[13] If the court has no jurisdiction over the nature of an action, its

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[12] *Commissioner of Internal Revenue v. Villa, et al.,* G.R. No. L-23988, January 2, 1968
[13] *Laresma v. Abellana*, G.R. No. 140973, 11 November 2004, 442 SCRA 156, 169.

only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[14]

WHEREFORE, the consolidated *Petitions for Review* filed on March 24, 2017 and April 10, 2017 by the Power Sector Assets and Liabilities Management (PSALM) Corporation and the Commissioner of Internal Revenue, are hereby **DISMISSED,** on jurisdictional ground.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[14] See *De Guzman, et al. v. Escalona, et al.*, G.R. No. L-51773, 16 May 1980, 97 SCRA 619, 627

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 among the members of the Court *En Banc* before the cases were assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
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MANAHAN, *JJ.*

Promulgated:
OCT 01 2018 4:21 p.m.

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DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With all due respect, I dissent from the majority decision which ordered the dismissal of the consolidated Petitions for Review filed by both Power Sector Assets And Liabilities Management Corporation ("PSALM") and the

Commissioner of Internal Revenue ("CIR"). For the orderly administration of justice, I maintain my position that the doctrine laid down by the Supreme Court in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue v. Commissioner of Internal Revenue*[1] ("*PSALM*") should only be applied in instances of similar factual milieu which is not the case here.

On this score, I adopt my discussion in *PNOC Development and Management Corporation v. Commissioner of Internal Revenue*[2] ("*PNOC*"), which expound on why *PSALM* should not be applied in each and every case. The relevant portions are quoted below:

> "xxx In that case, the Supreme Court decreed that '[u]nder 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.'
>
> The pertinent sections of PD 242 are as follows:
>
>> 'Section 1. **Provisions of law to the contrary notwithstanding, *all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree**.
>>
>> Section 2. **In all cases involving only questions of law, the same *shall* be submitted to and settled or adjudicated by the Secretary of Justice,** as Attorney General and *ex officio* adviser of all government-owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. **His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.**

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[1] G.R. No. 198146, En Banc, August 8, 2017.
[2] C.T.A. EB CASE NO. 1486, February 19, 2018.

> Section 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:
>
> (a) The Solicitor General, with respect to disputes or claims [or] controversies between or among the departments, bureaus, offices and other agencies of the National Government;
>
> (b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and
>
> (c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b).' (*Emphasis supplied*)

The provisions of PD 242 have also been 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.

The holding in the PSALM case was justified on the grounds that: a) the President's constitutional power of control over all the executive departments, bureaus and offices under Section 17, Article VII of the Constitution must be upheld; 42 b) under the doctrine of exhaustion of administrative remedies, relief under PD 242 must be pursued first prior to seeking judicial recourse, otherwise, the action would be premature and the case not ripe for judicial determination; 43 and c) in harmonizing Section 4 of the NIRC of 1997 which delineates the powers of the CIR with PD 242, the NIRC of 1997 is a general law while PD 242 is a special law and, hence, must prevail over the former.

The Supreme Court further discussed the rationale for vesting the Secretary of Justice with jurisdiction under PD 242, as follows:

> '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.

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.' *(Boldface and emphasis in the original)*

While the *PSALM* case vests the Secretary of Justice with jurisdiction over disputed tax assessments, it also has the necessary and, perhaps, unintended consequence of divesting this Court, the CTA, of its exclusive appellate jurisdiction over matters involving taxation if the controversy or dispute involves two government entities.

It is axiomatic that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. 47 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.

That being said, the Court of Tax Appeals is a court of special or limited jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. 49 The jurisdiction of the CTA is conferred by Republic Act (RA) No. 1125, as amended by RA No. 9282. The pertinent provision is quoted hereunder for ready reference:

> '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 Code 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;' (*Emphasis supplied*)

A study of both the PSALM case and the instant case show that due to their respective distinctive factual milieu, each has taken a different procedural path.

The PSALM case involved a dispute between PSALM and NPC, both GOCCs, and the BIR, a National Government Office. The controversy arose when the BIR demanded payment of deficiency VAT from PSALM arising from the sale of two power plants. While PSALM did pay the deficiency VAT pursuant to the Memorandum of Agreement that the parties involved signed, PSALM also questioned whether or not the sale of the power plants were subject to VAT with the Department of Justice (DOJ). The DOJ ruled in favor of PSALM, declaring the deficiency VAT assessment null and void. The CIR questioned the jurisdiction of the DOJ via Petition for Certiorari with the Court of Appeals (CA). The CA then ruled that the DOJ committed grave abuse of discretion amounting to lack of jurisdiction in issuing the ruling. PSALM appealed to the Supreme Court which decreed that the DOJ indeed has jurisdiction, as discussed above.

The instant petition, on the other hand, involves PDMC, a GOCC, and the CIR, as head of the BIR, a government office. There was an assessment, first and foremost, which PDMC protested. However, as there was inaction on the part of the CIR, PDMC found recourse to this Court pursuant to the judicial remedy laid down for taxpayers in Section 7 (a) (2) of RA 1125, as amended by RA 9282.

In both cases, the taxpayers involved pursued remedies made available to them by law, given their factual circumstances. In the PSALM case, there was no decision or inaction to speak of as the actions of the parties were governed by the Memorandum of Agreement. Hence, PSALM could not have appealed to the CTA, even if it wanted to, as the CTA would have no jurisdiction over the same. That is not the situation involved in the instant case wherein PDMC sought legal redress granted to them by law, specifically Section 7 (a) (2) of RA 1125, as amended by RA 9282, a law not even remotely discussed in the PSALM case as focus therein was on Section 4 of the NIRC of 1997 which dealt with the powers of the Commissioner of Internal Revenue and not the exclusive appellate jurisdiction of the CTA.

Second, to apply the PSALM doctrine wholesale to all cases involving solely government entities before this Court would have adverse effects not only on the jurisdiction of the CTA, but also on the remedies available to the CIR. This has been discussed in the Dissenting Opinion of Justice Mariano C. Del Castillo in the PSALM case, thus:

> 'It must be pointed out that to allow the Secretary of Justice to have jurisdiction over the instant case would not only deprive the CTA of its exclusive appellate jurisdiction but would also deprive respondent CIR of any judicial remedy. The Majority

> Opinion recommends that 'since the amount involved in this case is more than one million pesos, respondent CIR may appeal the DOJ Secretary's Decision to the Office of the President in accordance with Section 70, Chapter 14, Book IV of EO 292 and Section 5 of PD 242.' However, if the appeal to the Office of the President were denied, respondent CIR would have no judicial recourse. Respondent CIR would not be able to appeal the decision of the Office of the President to the Court of Appeals (CA) under Rule 43 of the Rules of Court because the CA has no jurisdiction to review tax cases. Neither can respondent CIR file a Petition with the CTA because the CTA has no jurisdiction over decisions of the Office of the President or the Secretary of Justice.'

Third, the PSALM case discusses PD 242 vis-a-vis Section 4 of the NIRC of 1997 in order to decide upon the issue of whether or not the Secretary of Justice has jurisdiction in a case involving solely government entities. In its discussion, the Court came to the conclusion that the NIRC of 1997 is a general law dealing with matters involving taxation and PD 242, a special law, governing adjudication of controversies and disputes between government entities. Being a special law, its provisions are paramount to the provisions of the NIRC of 1997, and hence, must be followed.

However, in ascertaining whether or not this Court has jurisdiction in this particular case, what ought to be weighed against PD 242 is not the NIRC of 1997, but RA 9282 which amended RA 1125. RA 9282, expanded the jurisdiction of the CTA and elevated its rank to the level of a collegiate court with special jurisdiction.

The difference between a special law and a general law was also discussed in the PSALM case, citing *Vinzons-Chato v. Fortune Tobacco Corporation*, thus:

> 'A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only.
>
> A general law and a special law on the same subject are statutes in pari materia and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule

> is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.
>
> The circumstance that the special law is passed before or after the general act does not change the principle. Where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed expressly or by necessary implication." (*Emphasis supplied*)

Using the above standards, it is apparent that PD 242 is a general law on the authority of the Secretary of Justice to settle and adjudicate all disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including GOCCs while RA 9282 is a specific law vesting exclusive appellate jurisdiction on the CTA in cases pertaining to disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC of 1997.

Furthermore, in the construction of these two statutes, it is of utmost importance to note the following. PD 242 was issued on July 9, 1973. The Administrative Code of 1987 which embodies the provisions of PD 242 took effect on November 24, 1989. On the other hand, RA 9282 which expanded the jurisdiction of the CTA and elevated its rank to the level of a collegiate court with special jurisdiction took effect on April 23, 2004. Once again, using the standards laid down in the *Vinzons-Chato* case, RA 9282, the special law that was passed later, must be regarded as an exception to or qualification of PD 242, the prior general law.

In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle, embodied in the maxim, '*ut res magis valeat quam pereat*,' that the courts should, if reasonably possible to do so without violence to the spirit and language of an act, so interpret the statute to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory.

Every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimum interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws.

It is to be noted that RA 9282, the special law that was passed later, had a repealing clause in Section 17 thereof which states:

> '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.'

The questions at this juncture are whether or not Sec. 7 (a) (2) of RA 9282 can be harmonized with PD 242/Administrative Code of 1987 and to what extent, if any, should both prior laws be repealed, amended or modified, as the case may be.

On the one hand, Sec. 7 of RA 9282 gives the CTA exclusive appellate jurisdiction over decisions or inaction of the CIR and other parties mentioned in the section regardless of who the parties are as long as they are taxpayers.

On the other hand, PD 242/Administrative Code of 1987 gives either the Solicitor General, the Government Corporate Counsel or the Secretary of Justice, as the case may be, jurisdiction over the administrative review of controversies between or among government offices, agencies and instrumentalities, including GOCCs regardless what the subject matter of the controversy is.

It has been said that if two or more laws on the same subject cannot possibly be reconciled or harmonized, one has to give way in favor of the other. There cannot be two conflicting laws on the same subject. Either 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.
>
> Assuming that the laws under discussion are all impossible to reconcile, then it would seem that PD 242 and the Administrative Code of 1987 have been repealed by RA 9282, considering that not only is it the later enactment, having taken effect on April 23, 2004, but it is also a special law that must prevail over the general one.
>
> However, the Court need not go to that extent as the laws under discussion may be reconciled. Taking our cue from RA 9282, the later enactment, the Court deems PD 242 and the Administrative Code of 1987 modified to the extent that when the controversy between or among government offices, agencies and instrumentalities, including GOCCs involve any of the matters listed in Section 7 (a) thereof, then the CTA has exclusive appellate jurisdiction. All other controversies between or among the aforementioned parties that do not involve taxation matters or interpretation of the provisions of the NIRC of 1997 may properly follow the procedure for administrative settlement or adjudication of disputes laid down in PD 242 and the Administrative Code of 1987.
>
> Considering the foregoing discussion and the fact that the Petition was timely filed, this Court has jurisdiction over this case and will exercise it so."

Similar to *PNOC* above, it is my humble belief that this Court has jurisdiction to entertain the instant case.

All told, I vote to **AFFIRM** the September 19, 2016 Decision and March 08, 2017 Resolution of the First Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice