REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

****

THE DEPARTMENT OF ENERGY REPRESENTED BY ITS SECRETARY, HON. ALFONSO G. CUSI, Petitioner,	**CTA Case No. 9596** ***Members:*** **UY,** *Chairperson,* and **RINGPIS-LIBAN,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 16 2019 9:50 a.m.

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DECISION

UY, *J.*:

This Petition for Review filed by the Department of Energy (or DOE) against the Commissioner of Internal Revenue (or CIR) on May 24, 2017 prays for the reversal of the Decision dated April 11, 2017 of the CIR which found the DOE liable for alleged deficiency excise taxes for taxable years 2011 and 2012.[1]

THE FACTS

Petitioner, Department of Energy, created pursuant to Republic Act (RA) No. 7683, is the government agency vested by law with the powers and functions to prepare, integrate, coordinate, supervise, and control all plans, programs, projects, and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation.[2]

[1] Par. 1, Summary of the Case, Pre-Trial Order, docket, p. 189
[2] Par. 3, Facts, Pre-Trial Order, docket, p. 190

Respondent, Commissioner of Internal Revenue, on the other hand, is the head of the Bureau of Internal Revenue (BIR), the government agency charged with implementing the National Internal Revenue Code (NIRC) and collecting all internal revenue taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

On July 5, 2012, respondent issued a Notice of Discrepancy under Reference No. LTFOD-2012-7-P-038 concerning petitioner's alleged deficiency taxes on exported crude oil from Service Contract No. 14 (SC 14-C) being operated by Galoc Production Company (GPC) covering the period June 2011 and the second semester of 2011. Respondent alleged that petitioner is liable to pay and is being assessed with a deficiency excise tax on exported products in accordance with Section 130(A)(1) of the NIRC of 1997, as amended, in the amount of ₱290,977,434.65, inclusive of penalties.[4]

In the letter dated July 25, 2012, petitioner protested the said assessment on the ground that the term "owner" as used in Section 130(A)(1) of the NIRC of 1997, as amended, refers to the service contractor and not petitioner DOE, which is "an agent or instrumentality of the State" and as such, does not own a mining claim or concession.[5]

In the letter dated September 14, 2012, respondent demanded the payment of the assessed deficiency excise taxes and reiterated that petitioner DOE, as the government agency tasked to operate the mining claim and is therefore the owner thereof, is directly liable for excise taxes under Section 130(A)(1) of the NIRC of 1997, as amended.[6]

Still in relation to Service Contract No. 14, on March 26, 2013, respondent also issued a Notice of Discrepancy under Reference No. ELTFOD-2013-3-P-067 on the alleged non-payment of excise tax on the export sales of crude oil by GPC covering the year 2012.[7]

In the letter dated May 9, 2013, petitioner protested the said assessment using the same ground that the term "owner" as used in Section 130(A)(1) of the NIRC of 1997, as amended, refers to the

[3] Pars. 1 and 2, Facts, Pre-Trial Order, Docket, p. 190
[4] Par. 4, Statement of Facts and of Law, Petition for Review, Docket, p. 7; Par. 5(b), Facts, Pre-Trial Order, Docket, p. 190
[5] Annex A, Petition for Review, Docket, pp. 17-19; Par. 5(c), Facts, Pre-Trial Order, Docket, p. 190
[6] Annex B, Petition for Review, Docket, pp. 20-22; Par. 5(d), Facts, Pre-Trial Order, Docket, p. 190
[7] Annex E, Petition for Review, Docket, pp. 28-29; Par. 5(g), Facts, Pre-Trial Order, Docket, p. 191

service contractor and not petitioner DOE.[8] Respondent, however, reiterated his position in the letter dated June 25, 2013.[9]

On July 4, 2013, respondent issued a Formal Letter of Demand directing petitioner to pay the assessed deficiency excise taxes for the year 2012.[10] Thereafter, on April 27, 2016, respondent issued a Collection Letter to demand payment of petitioner's alleged deficiency excise taxes, detailed as follows:[11]

ASSESSMENT NOTICE NOS.	PERIOD COVERED	TOTAL
ELTFOD-2013-3-P-067	Taxable Year 2012	₱ 235,039,070.72
LTFOD-2012-7-P-038	June 2011 and Second Semester of Taxable Year 2011	₱ 358,688,725.64
TOTAL		**₱593,727,796.36**

Petitioner requested for reconsideration of the Collection Letter dated April 27, 2016 in its letter dated June 3, 2016.[12]

In the letter dated April 11, 2017 received by petitioner on April 24, 2017, respondent, through OIC-Assistant Commissioner (Large Taxpayers Services) Teresita M. Angeles, denied petitioner's request for reconsideration and reiterated the position that the DOE, being the owner of the mining claim, is liable to pay the excise tax due on exported crude oil pursuant to Section 130(A)(1) of the NIRC of 1997, as amended.[13]

Consequently, petitioner filed the instant Petition for Review before this Court on May 24, 2017 assailing said denial.

On September 26, 2017, respondent filed his Answer[14] interposing the following counter-arguments and affirmative defenses:

> "3.1. Petitioner is liable to pay the excise taxes due on the exported crude oil from Galoc Production Company Company (GPC) operation under the Service Contract 14-C (SC 14-C) for the period of second semester of 2011 including transactions in June 2011 which were billed in July 2011, and for the year 2012.

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[8] Annex F, Petition for Review, Docket, pp. 30-32; Par. 5(h), Facts, Pre-Trial Order, Docket, p. 191
[9] Annex G, Petition for Review, Docket, pp. 33-35; Par. 5(i), Facts, Pre-Trial Order, Docket, p. 191
[10] Annex H, Petition for Review, Docket, pp. 36-40; Par. 5(j), Facts, Pre-Trial Order, Docket, p. 191
[11] Annex I, Petition for Review, Docket, p. 41; Par. 5(k), Facts, Pre-Trial Order, Docket, p. 191
[12] Annex J, Petition for Review, Docket, pp. 42-45; Par. 5(l), Facts, Pre-Trial Order, Docket, p. 191
[13] Annex K, Petition for Review, Docket, p. 46; Par. 5(m), Facts, Pre-Trial Order, Docket, p. 191
[14] Docket, pp. 69-87

3.2. Verification disclosed that there were export sales of indigenous petroleum, particularly crude oil extracted by Galoc Production Company (GPC) (SC 14-C) from its offshore operations for the **Second Semester of 2011** including transactions during June 2011 which were billed on July 2011, and for the **year 2012**.

3.3. Accordingly, Notice of Discrepancy LTFOD-2012-7-P-038 dated 5 July 2012 was issued and served to petitioner informing the latter of its deficiency excise tax for the **Second Semester of 2011** including transactions during June 2011 which were billed on July 2011. Also, Notice of Discrepancy ELTFOD-2013-3-P-067 dated 26 March 2013 was likewise issued and served to petitioner notifying the latter of its deficiency excise tax for the **year 2012**.

3.4. Crude oil being an indigenous petroleum is subject to excise tax under Section 151 (A) (4) of the National Internal Revenue Code (NIRC) of 1997, as amended.

3.5. Petitioner, as the owner of the mining claim, is liable to pay the excise tax due on the exported indigenous petroleum in accordance with the provision of Section 130 (A) (1) paragraph 1 of the NIRC of 1997 which states:

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3.6. Petitioner erroneously contends that service contract does not equate to mining claim and that petitioner is not the owner of the mining claim as the 'owner' refers to the service contractor, not to petitioner. Respondent begs to disagree.

3.7. Pursuant to the Regalian Doctrine, all natural resources belong to the State. Section 2, Article XII of the 1987 Constitution provides:

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3.8. Following the Regalian Doctrine, the exploration, development, or utilization is under full control and supervision of the State. Petitioner Department of Energy (DOE), is tasked to directly or indirectly undertake the exploration and production of indigenous petroleum. Consequently, petitioner, being the owner of the mining

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claim, is liable to pay the excise tax due on the exported crude oil pursuant to Section 130 (A) (1) of the NIRC of 1997.

3.9. Relative thereto, Presidential Decree No. 87, otherwise known as 'The Oil Exploration and Development Act of 1972' provides:

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3.10. It is clear that while the government may, at its option, avail the services and technology of a qualified contractor at a stipulated fee under a service contract, it is the DOE that is indirectly operating the contracted area that the State owns. The contractor operates the field on behalf of the government considering that all petroleum produced belongs to the government. The contractor does not acquire ownership of the petroleum produced but may be authorized by the contract to take and dispose of and market either domestically or for export all petroleum produced subject to supplying the Republic of the Philippines on a pro-rata basis.

3.11. While Galoc Production Company (GPC) is the alleged contractor, **it is petitioner DOE that is the owner of the mining claim.** The nature of the term 'Service Contract' as defined under Section 6 of P.D. No. 87 partakes of service and technology to be furnished by the service contractor for which it shall be entitled to the stipulated service fee while financing is provided by the Government to which all petroleum produced shall belong.

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3.13. It is alleged by petitioner in its Petition that the Government represented by the DOE is the grantor of the mining rights. The same only concludes that the Government represented by the DOE is the owner of the mining claim. Petitioner cannot be the grantor if it is not the owner of the mining claim. One cannot grant something to another that does not belong to him.

3.14. Therefore, petitioner, as the government agency tasked to operate the mining claim is the owner of the same. As such, it is liable for the excise taxes being the owner, lessee, concessionaire or operator of the mining claim under Section 130 (A) (1) of the NIRC of 1997.

3.15. Further, it must be noted that petitioner has paid P484,151,934.89 for the excise tax due on the export sales of crude oil from Galoc Production Company's (GPC) operation under the same Service Contract 14-C (SC 14-C) for the years 2008, 2009, 2010 and January to June 2011. The same was paid without any objection or opposition to the assessment for the years 2008, 2009, 2010, and January to June 2011. Clearly, petitioner is estopped from questioning the assessment against it for the subsequent years (second semester of 2011 including transactions in June 2011 which were billed in July 2011, and for the year 2012.)

3.16. Petitioner is estopped from contesting the fact that it is liable for the excise taxes on export sales of crude oil pursuant to Section 130 (A) (1) of the NIRC of 1997. Respondent submits that, as compared to the validity of waiver, the validity of assessment is likewise affirmed where petitioner made payment of the assessments against it, thus, estopped from questioning their validity. As held in *RCBC vs. CIR, G.R. No. 170257, Sept. 7, 2011*:

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3.17. Clearly, petitioner's payment of the assessed excise taxes due on the export sales of crude oil from the same GPC operation under SC 14-C for the years 2008, 2009, 2010, and January to June 2011 implies that it abandoned or waived its question on respondent's assessments pertaining thereto.

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4. The assessments issued against petitioner are already final, executory, demandable, and unappealable. Thus, the Honorable Court has no jurisdiction over the instant petition.

4.1. A taxpayer's right to contest assessments, particularly the right to appeal to the Court of Tax Appeals (CTA), may be waived or lost as in this case.

4.2. Petitioner filed the instant Petition for Review on 24 May 2017 reckoned from its alleged receipt of the BIR Letter dated 11 April 2017 on 24 April 2017.

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4.3. To put emphasis, such BIR Letter dated 11 April 2017 is the denial of petitioner's Motion for Reconsideration of the BIR's Collection Letter dated 17 April 2016. Thus, petitioner's remedy of appealing before the Honorable Court is misplaced and has no legal basis.

4.4. Considering that respondent already issued the Collection Letter dated 17 April 2016, the assessments against petitioner involve **delinquent taxes**. Hence, there are no disputed assessments as they became undisputed for failure of petitioner to file its protests against the assessments.

4.5. As regards the assessed deficiency tax for the **Second Semester of 2011** including transactions during June 2011 which were billed on July 2011, records reveal that the Notice of Discrepancy LTFOD-2012-7-P-038 dated 5 July 2012 was issued and served on 17 July 2012. The assessment was reiterated in the BIR Letter dated 14 September 2012 duly served to petitioner. Accordingly, the Formal Letter of Demand (FLD) dated 21 March 2013 and Final Assessment Notice (FAN) were served to petitioner on 5 April 2013. While petitioner filed the protest dated 17 June 2017, it is clear that the protest was filed out of time considering that the FLD and FAN were served on 5 April 2013 but the protest is dated 17 June 2013.

4.6. With regard to the assessed deficiency tax for the **year 2012**, records show that the Notice of Discrepancy ELTFOD-2013-3-P-067 dated 26 March 2013 was issued and served on 5 April 2013. The assessment was again reiterated in the BIR Letter dated 25 June 2013 duly served to the petitioner. Accordingly, the Formal Letter of Demand (FLD) dated 4 July 2013 and Final Assessment Notice (FAN) were served to petitioner on 17 July 2013. Note that this time, such FLD and FAN were never protested by petitioner.

4.7. Based on the foregoing, it is clear that the assessments were undisputed for failure to timely protest the FLD/FAN dated 21 March 2013, and for totally failure to protest the FLD/FAN dated 4 July 2013.

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4.10. Based on the foregoing discussion, the present petition must be dismissed on the ground that the Honorable Court has no jurisdiction over the subject matter of the claim, under Section 1, Rule 16 of the 1997 Rules of Civil Procedure.

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4.12. The nature of the jurisdiction of the Honorable Court of Tax Appeals (CTA) is exclusively appellate. It is a court of special jurisdiction and as such it can only take cognizance of such matters as are clearly within its jurisdiction.

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4.14. While the above statute confers on the Honorable CTA jurisdiction to resolve tax disputes in general, this does **not** include cases where the assessment has already become final, executory, unappealable, and incontestable.

4.15. When petitioner filed the instant petition on 24 May 2017, this Honorable Court did not acquire jurisdiction over the petition as the assessment (FLD/FAN) became final and executory after thirty (30) days from service of the FLD/FAN dated 21 March 2013 and the FLD/FAN dated 4 July 2013. Thus, the **assessments as contained in the FLD/FAN had become final, executory, and demandable** **<u>by operation of law</u>.**

4.16. It is apparent from the admissions in the petition and the reliefs sought therein as discussed in the previous arguments that the assessment subject of this case has long become final, executory, and demandable. Being such, the assessment is not subject to judicial scrutiny and beyond the jurisdiction of the Honorable court. Jurisprudentially, **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action**.

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5. Moreover, the instant petition is dismissible considering that the Verification and Certification of Non-Forum Shopping is irregular and invalid. Such defect affects the whole petition and renders it a mere scrap of paper.

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> 6. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. *(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R. No. 136975, March 31, 2005.)"*

A Notice of Pre-Trial Conference[15] was issued by the Court on September 29, 2017, setting the case for pre-trial conference on February 13, 2018. Only respondent filed his Pre-Trial Brief[16] on February 2, 2018. During the Pre-Trial Conference, only respondent's counsel appeared. Thus, the Court granted the motion of respondent's counsel to dismiss this case for failure of petitioner's counsel to appear despite due notice and for failure to file the required Pre-Trial Brief.[17]

Consequently, petitioner filed on March 9, 2018, a Motion for Reconsideration (of the Order dated 13 February 2018) with Motion to Admit the Attached Pre-Trial Brief.[18] In its Pre-Trial Brief[19], petitioner alleges that it will no longer present documentary evidence considering that the issues involved are only questions of law. Respondent filed his Opposition[20] thereto on April 2, 2018.

In the Resolution[21] dated on April 11, 2018, the Court granted petitioner's motion for reconsideration, and set the case anew for pre-trial conference on July 3, 2018. Thereafter, the parties filed their Joint Stipulation of Facts and Issue[22] on July 13, 2018.

On August 6, 2018, the Court issued the Pre-Trial Order[23] approving the parties' joint stipulations and admissions and ordering the parties to submit their respective memoranda within thirty (30) days from notice.

Respondent filed his Memorandum[24] on September 7, 2018,

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[15] Docket, pp. 89-90
[16] Docket, pp. 115-119
[17] Order dated February 13, 2018, Docket, p. 123
[18] Docket, pp. 124-130
[19] Docket, pp. 131-133
[20] Docket, pp. 138-144
[21] Docket, pp. 157-159
[22] Docket, pp. 182-185
[23] Docket, pp. 189-192
[24] Docket, pp. 193-216

while petitioner filed its Memorandum[25] on September 17, 2018. Hence, the Court considered this case submitted for decision on September 24, 2018.[26]

THE ISSUES

The parties submitted the following issues[27] for the Court's resolution:

1. Is the Court vested with jurisdiction over the instant petition?

2. In the alternative that the Court has jurisdiction over the petition, is the denial of petitioner's protest proper and in conformity with the law?

3. Is petitioner liable to pay the assessed deficiency taxes on exported crude oil from SC 14-C for the years 2011 and 2012 based on Section 130(A)(1) of the NIRC, as amended?

THE COURT'S RULING

The Court shall first resolve the issue on jurisdiction.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[28] The jurisdiction of the CTA regarding internal revenue tax assessments is provided under Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "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

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[25] Docket, pp. 217-231
[26] Resolution, docket, p. 258
[27] Issues, Pre-Trial Order, docket, p. 191
[28] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014

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;"

While it is clear from the afore-quoted provisions that the decision of the Commissioner of Internal Revenue involving disputed assessments falls within the exclusive appellate jurisdiction of this Court, a jurisdictional issue arises when the parties involved are both government agencies, as in the instant case.

In this regard, the provisions of Presidential Decree (PD) No. 242[29] are instructive as it provides the procedure for the settlement or adjudication of disputes involving government offices, agencies, and instrumentalities, including government-owned and controlled corporations, as well as, the appropriate agency to resolve such disputes. Pertinently, Sections 2 and 3 of PD No. 242 are quoted as follows:

"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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[29] 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
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> (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)."

In the case of *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*[30], the Supreme Court has settled this jurisdictional issue wherein the disputed assessment pertains to government agencies and instrumentalities, including government-owned and controlled corporations. We quote:

> "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 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

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

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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:

> 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 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.**
>
> 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]

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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)

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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. In fact, the MOA executed by the BIR, NPC, and PSALM explicitly provides that '[a] ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM.' Such provision indicates that the BIR and petitioner PSALM and the NPC acknowledged that the Secretary of Justice indeed has jurisdiction to resolve their dispute.

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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 intergovernmental 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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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. The pertinent provisions read:

Chapter 14 — Controversies Among Government Offices and Corporations

SEC. 66. *How Settled.* – All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

SEC. 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.

SEC. 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*)

The above-quoted jurisprudence is applicable to the present case considering that the subject disputed assessment is between the Department of Energy and the Bureau of Internal Revenue, both government entities. Thus, in light of the foregoing ruling of the Supreme Court, this Court has no jurisdiction over the present case.

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.[31]

Perforce, it is important that a court or tribunal should first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.[32]

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

Furnish the Office of the Solicitor General with a copy of this decision pursuant to the provisions of the Administrative Code of 1987.

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[31] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015

[32] *Bilag, et al. vs. Ay-ay, et al.*, G.R. No. 189950, April 24, 2017

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice