REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9599

Members:

Del Rosario, *P.J.*, Chairperson,
Uy,
Mindaro-Grulla, *JJ.*

Promulgated:

FEB 22 2018 · 4:00 pm

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RESOLUTION

In the Resolution dated December 12, 2017, the Court directed the parties to show cause, within ten (10) days from notice thereof, as to why the instant case should not be dismissed pursuant to the pronouncement of the Supreme Court *En Banc* in ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue***[1] ***("PSALM")***.

On January 8, 2018, petitioner filed its Comment/Position Paper. Meanwhile, respondent filed his Manifestation on February 1, 2018.

Petitioner's Position

Petitioner avers that the Court of Tax Appeals (CTA) has the exclusive appellate jurisdiction over respondent's decision on disputed assessment or tax refunds under Republic Act (RA) No. 1125, as amended.

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

Petitioner explains that in ***PSALM***, the petition for settlement of claims filed by the Power Section Assets and Liabilities Management Corporation's (PSALM) before the Department of Justice (DOJ) is **not an appeal** from a decision of the CIR on a disputed assessment, (unlike in the present case), but an **original action** wherein the DOJ was asked to settle PSALM's claim against the BIR relative to the August 30, 2017 Memorandum of Agreement (MOA) executed among the BIR, PSALM and the National Power Corporation. It appears that the BIR's collection of basic Value Added Tax (VAT) from PSALM was not based on a valid assessment but by virtue of the August 30, 2007 MOA. Thus, when PSALM filed its petition for settlement of claims with the DOJ, the same was not a protest in contemplation of existing tax laws.

Petitioner posits that even assuming that pursuant to ***PSALM***, the CTA has no jurisdiction to entertain any review of tax cases between the BIR and agencies of the government, or government-owned or controlled corporations (GOCCs), it would not warrant the automatic dismissal of this case since at the time of its filing, the prevailing interpretation of the law is that the CTA has exclusive appellate jurisdiction to review by appeal, the decision of respondent in cases involving disputed assessments. Petitioner reasons that the reversal of the interpretation of the law cannot be given retroactive effect to the prejudice of parties who may have relied on the first interpretation.

Petitioner further asserts that the jurisdiction of a court depends upon the state of facts existing at the time it is invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have prevented jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already attached. Jurisdiction once acquired is not lost but continues until the case is finally terminated.

In support of its position, petitioner cites ***Philippine National Oil Company vs. The Honorable Court of Appeals et al.***[2] ***("PNOC")*** *and* ***Commissioner of Internal Revenue vs. Secretary of Justice and Philippine Amusement and Gaming Corporation***[3] ***("PAGCOR").***

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[2] G.R. Nos. 109976 and 112800, April 26, 2005.
[3] G.R. No. 177387, November 9, 2016.

Respondent's Manifestation

Respondent's statements in his Manifestation amplifies petitioner's position, similarly citing ***PNOC*** and ***PAGCOR,*** and submits that the vacillating positions of the Supreme Court is apparent and renders one valid opinion now, invalid later, depending on the mindset of the Supreme Court. Nevertheless, respondent manifests that in ***PAGCOR***, the Supreme Court stated that the emergence of a later ruling reversing a judicial interpretation of the law was beyond the parties' control, thus, reversal of the interpretation cannot be given retroactive effect to prejudice the parties.

THE COURT'S RULING

Considering the implication of the pronouncement in ***PSALM***[4] to cases pending before this Court involving *intra-governmental disputes or controversies,* it is necessary to re-visit the development of jurisprudence anent the application of Presidential Decree (PD) No. 242 *vis-à-vis* Republic Act (RA) No. 1125, as amended.

In 1981, the Supreme Court *En Banc*, in ***Development Bank of the Philippines vs. Court of Appeals***,[5] affirmed the findings of the Court of Appeals which ruled that the CTA had no jurisdiction to resolve the controversy between Development Bank of the Philippines, a GOCC, and the Commissioner of Customs and that the case should have been decided in accordance with the mode of settlement and adjudication set forth in Sections 2 and 3 of PD No. 242. Anent the conflict between the provisions of PD No. 242 and RA No. 1125, the Supreme Court *En Banc* held:

> "The Court also rejects the DBP's second argument and expresses with the conclusion of the Court of Appeals- and the basic premises thereof that there is an "irreconcilable repugnancy ... between Section 7(2) of R.A. No. 1125 and P.D. No. 242," and hence, that the later enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier."

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[4] G.R. No. 198146, August 8, 2017.
[5] G.R. No. 86625, December 22, 1981.

In **2005**, the Supreme Court *En Banc* promulgated ***PNOC***[6] declaring that CTA has jurisdiction to resolve controversies falling under Section 7 of RA No. 1125, the provision of PD No. 242 notwithstanding. It then made a categorical pronouncement that RA No. 1125 (the law creating the CTA), which is a special law, prevails over PD No. 242, *viz.*:

> "Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect Rep. Act No. 1125. Rep. Act No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. **Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and instrumentalities**, including government-owned and controlled corporations, **remain in the exclusive appellate jurisdiction of the CTA**. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant." (Boldfacing supplied)

In ***PNOC***, the Supreme Court went on to clarify that even if PD No. 242 is made to prevail over RA No. 1125, its provisions may not be applied as the dispute involved is **not solely an intra-governmental controversy**. The pertinent pronouncement of the Supreme Court *En Banc* reads:

> "Even if, for the sake of argument, that P.D. No. 242 should prevail over Rep. Act No. 1125, the present dispute would still not be covered by P.D. No. 242. Section 1 of P.D. No. 242 explicitly provides that only disputes, claims and controversies, ***solely*** between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices or agencies, as well as government-owned and controlled corporations, shall be administratively settled or adjudicated. While the BIR is obviously a government bureau, and both PNOC and PNB are government-owned and controlled corporations, **respondent Savellano is a private citizen**. His standing in the controversy could not be lightly brushed aside. It was private respondent Savellano who gave the BIR the information that resulted in the investigation of PNOC and PNB; who requested the BIR Commissioner to reconsider the compromise agreement in question; and who initiated CTA Case No. 4249 by filing a Petition for Review." (Boldfacing supplied)

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[6] G.R. Nos. 109976 and 112800, April 26, 2005.

In **2016**, the First Division of the Supreme Court, in ***PAGCOR,***[7] reiterated and applied the doctrine laid down in ***PNOC*** as it held that the Secretary of Justice is bereft of jurisdiction in reviewing the disputed tax assessments issued by the CIR against the Philippine Amusement and Gaming Corporation (PAGCOR).

Under Section 4 (3) of Article VIII of the 1987 Constitution, the doctrine enunciated by the Supreme Court *En Banc* in ***PNOC*** could only be modified or reversed by a subsequent decision of the Supreme Court *En Banc*:

> "ARTICLE VIII
> **JUDICIAL DEPARTMENT**
>
> xxx xxx xxx
>
> (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: *Provided,* that **no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc**." (Boldfacing supplied)

As *PNOC* has been overturned by the Supreme Court *En Banc* in *PSALM*, this Court is left with no recourse but to apply *PSALM* in the present case.

In ***PSALM***, the Supreme Court *En Banc* is categorical in declaring that the resolution of **ALL** disputes solely between departments, bureaus, offices, agencies and instrumentalities of the National Government shall be administratively settled or adjudicated by the Secretary of Justice. The pertinent portions of the Supreme Court's disquisition read:

> "Xxx, 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

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

tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. Sections 1, 2, and 3 of PD 242 read:

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The use of the word "shall" in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word "shall" means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims ***"solely"*** between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.

The law is clear and covers ***"all disputes, claims and controversies solely*** **between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements."** When the law says "all disputes, claims and controversies solely" among government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to <u>lessen the clogged dockets of the courts</u>**. 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.**

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Xxx since this case is a dispute **solely** 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.

It is only proper that intra-governmental disputes be settled administratively since the **opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision**.

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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** (<u>covers disputes between the BIR and other government entities</u>), 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**.

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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 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." (Underscoring supplied)

The Supreme Court *En Banc* also distinguished ***PSALM*** from ***PNOC*** by emphasizing that the dispute in ***PSALM*** is **solely** between a bureau and two (2) GOCCs while the controversy in ***PNOC*** involves a private citizen, *viz.*:

> "This case is different from the case of *Philippine National Oil Company v. Court of Appeals*, (PNOC v. CA) which involves not only the BIR (a government bureau) and the PNOC and PNB (both government owned or controlled corporations), but also respondent Tirso Savellano, **a private citizen**. Clearly, PD 242 is not applicable to the case of PNOC v. CA. Even the *ponencia* in *PNOC v. CA* stated that the dispute in that case is not covered by PD 242 xxx."

In rendering ***PSALM***, the Supreme Court *En Banc* was mindful of its earlier pronouncement in ***PNOC*** that the CTA has jurisdiction over intra-governmental disputes, the provisions of PD No. 242 notwithstanding. **Yet, the Supreme Court *En Banc*, after reviewing its ruling in *PNOC,* found sufficient basis to modify the doctrine laid down therein and plainly stated in *PSALM* that jurisdiction over intra-governmental disputes shall be governed by PD No. 242**.

Jurisdiction is vested by law. Since the Supreme Court has reconciled and interpreted the provisions of PD No. 242 and RA No. 1125, as amended, and declared in ***PSALM***, 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.

Anent petitioner's position that the CTA can still entertain its Petition for Review since it was filed with the CTA before the promulgation of the ***PSALM*** *on* **August 8, 2017**, it must be noted that PD No. 242, the law interpreted in the ***PSALM***, was enacted on **July 9, 1973**, now embodied in Chapter 14, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, took effect on November 24, 1989 long before the instant case was filed.[8]

Once the Supreme Court has interpreted a law, such interpretation becomes a part of the law itself, as of the date it was originally passed. The Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a

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[8]*Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*, G.R. No. 198146, August 8, 2017.

pre-existing one.[9] Thus, the Supreme Court *En Banc*'s ruling in ***PSALM*** retroacts to the date when P.D. 242 took effect on November 24, 1989.

The **referral of the present petition to the DOJ is the most appropriate action to take**. The Court notes that while the present Petition for Review was filed on **May 24, 2017** or prior to the promulgation of ***PSALM*** on **August 8, 2017**, still the stage of the present case has just reached the recent termination of pre-trial conference. Thus, the Court, in the language of ***PAGCOR***, has ample opportunity to abide by the new rule. Applying the doctrine laid down in ***PAGCOR*** that 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, *viz.*:

> "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:
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> > "While this ruling (DBP) has been superseded by the ruling in *Philippine National Oil Company vs. CA,* **<u>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</u>** 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."
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> We **disagree** with the action of the Secretary of Justice.
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> **PAGCOR filed its appeals in the DOJ on January 5, 2004 and <u>August 4, 2004.</u> *Philippine National Oil Company v. Court of Appeals* was promulgated on <u>April 26, 2006</u>. The Secretary of Justice resolved the petitions on <u>December 22, 2006</u>. 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**

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[9] *Roos Industrial Construction, Inc. vs. National Labor Relations Commission,* G.R. No. 172409, February 4, 2008.

> **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 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.
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> Nonetheless, the **Secretary of Justice should not be taken to task for initially entertaining the petitions considering that the prevailing interpretation of the law on jurisdiction at the time of their filing was that he had jurisdiction. Neither should PAGCOR to blame in bringing its appeal to the DOJ on January 5, 2004 and August 4, 2004 because the prevailing rule then was the interpretation in *Development Bank of the Philippines v. Court of Appeals.*** The emergence of the later ruling was beyond PAGCOR's control. Accordingly, the lapse of the period within which to appeal the disputed assessments to the CTA could not be taken against PAGCOR." (Boldfacing and underscoring supplied)

Unless and until modified by the Supreme Court *En Banc*, the interpretation of PD No. 242 in ***PSALM*** 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.

Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings. [10] Any pronouncement made by the Supreme Court in its judicial decisions becomes the law of the land.[11] Adherence to the principle of *stare decisis et non quieta movere* is mandated for all lower courts, and as such this Court should follow suit and apply the doctrine laid down in ***PSALM***.

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[10] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003.

[11] Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines., Civil Code of the Philippines.

In view of the foregoing discussion, there is nothing in petitioner's Comment/Position Paper and in respondent's Manifestation, which would warrant the non-application of the Supreme Court *En Banc*'s pronouncement in ***PSALM***.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction and **REFERRED** to the **Department of Justice** for adjudication. Accordingly, all hearings previously set for this case are hereby **CANCELLED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice