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

***EN BANC***

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| **DAVAO CITY WATER DISTRICT,** *Petitioner,* | **CTA *EB* NO. 1822** (CTA Case No. 8979) |
| | Present: |
| *-versus-* | **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: OCT 28 2019 11:13 a.m. |

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# DECISION

**MANAHAN, J.:**

Before the Court *En Banc* is a Petition for Review,[1] filed by Davao City Water District, assailing the Decision and Resolution dated September 5, 2017 and February 21, 2018, respectively, which denied the claim for refund of franchise taxes paid in taxable year 2012 amounting to Php24,824,005.45.

## The Facts

The Court in Division recited the facts, as follows:

> Petitioner Davao City Water District is a government-owned water utility created and organized under and by virtue of Presidential Decree (PD) No. 198, Davao City Ordinance No. 707 dated November 1, 1973,

[1] *Rollo*, pp. 2-32.

> and Davao City Council Resolution No. 1283 dated February 13, 1975 with Tax Identification No. 000-261-243. It is a public utility engaged in the production and supply of potable water to the entire City of Davao since 1973. Petitioner holds office at Km. 5, J.P. Laurel Avenue, Bajada, Davao City.
>
> On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
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> On August 8, 2014, petitioner filed its Petition for Franchise Tax Refund for the year 2012 before respondent.
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> Since the claim was not acted upon by respondent, petitioner filed the instant Petition for Review on January 21, 2015. Respondent filed his Answer thereto via registered mail on April 28, 2015 and received by the Court on May 7, 2015.
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> xxx xxx xxx.[2]

In the case before the Court in Division, petitioner argued that "it cannot be a franchisee under the fundamental law of the land, and thus, cannot be subject to franchise tax. Moreover, it claims that a franchise is not necessary for petitioner to operate as a water utility. It avers that it is a public utility owned by the government of the Philippines. Since it forms part of the government machinery, it should not be subject to franchise tax."[3]

On the other hand, respondent argued that "petitioner, as a Local Water District, is liable for payment of franchise tax. Respondent adds that upon the enactment of Republic Act (RA) No. 7109, the exemption privilege granted to Local Water Districts was limited to a period of five (5) years. Respondent also avers that it is clear that a franchise tax is imposed on water utilities by virtue of Section 119 of the National Internal

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[2] *Rollo*, Decision dated September 5, 2017, pp. 384-385.
[3] *Rollo*, Decision dated September 5, 2017, p. 388.

Revenue Code of 1997, as amended. Moreover, respondent argues that in case of a refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund."[4]

The case proceeded to trial, after which the Court in Division rendered the assailed Decision, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the instant Petition for Review filed by Davao City Water District is **DENIED** for lack of merit.
>
> **SO ORDERED.**[5]

Petitioner's Motion for Reconsideration[6] was likewise denied, as follows:

> **WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[7]

On April 2, 2018, the Court received the subject Petition for Review,[8] filed by petitioner through registered mail on March 21, 2018.

On July 12, 2018, respondent filed his Comment (Re: Petition for Review).[9] On August 9, 2018, respondent also filed his Manifestation[10] that he is adopting the arguments raised in the Comment to the Petition for Review filed on 12 July 2018 as his Memorandum. On October 2, 2018, the Court received Petitioner's Memorandum,[11] filed through registered mail on September 24, 2018.

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[4] *Rollo*, Decision dated September 5, 2017, p. 388.
[5] *Rollo*, Decision dated September 5, 2017, p. 394.
[6] *Rollo*, pp. 398-406.
[7] *Rollo*, Resolution dated February 21, 2018, p. 421.
[8] *Rollo*, pp. 2-32.
[9] *Rollo*, pp. 436-441.
[10] *Rollo*, pp. 445-448.
[11] *Rollo*, pp. 450-475.

Considering the foregoing, the case was deemed submitted for decision on November 15, 2018.[12]

## Issue

Petitioner presents the lone legal issue: Whether or not the franchise tax mentioned under Section 119 of the Tax Code may be assessed and imposed on petitioner.[13]

## Ruling of the Court

The petition should be dismissed for lack of jurisdiction.

The Supreme Court *En Banc* has ruled in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*[14] (PSALM case) that disputes and claims solely between government agencies and offices, including government-owned or controlled corporations (GOCCs), shall be resolved following the administrative procedure in Sections 2 and 3 of Presidential Decree No. (PD) 242.

> xxx 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 assessments, 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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[12] *Rollo*, pp. 478-479.
[13] *Rollo*, Petition for Review, p. 14.
[14] G.R. No. 198146, August 8, 2017.

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.**

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 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.** As explained by the Court in *Philippine Veterans Investment Development Corp. (PHIVIDEC) v. Judge Velez*:

> Contrary to the opinion of the lower court, P.D. No. 242 is not unconstitutional. It does not diminish the jurisdiction of [the] courts but only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and

> instrumentalities of the National Government, including government-owned or controlled corporations, so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements. The procedure is not much different, and no less desirable, than the arbitration procedures provided in Republic Act No. 876 (Arbitration Law) and in Section 26, R.A. 6715 (The Labor Code). It is an alternative to, or a substitute for, traditional litigation in court with the added advantage of avoiding the delays, vexations and expense of court proceedings. Or, as P.D. No. 242 itself explains, its purpose is "the elimination of needless clogging of court dockets to prevent the waste of time and energies not only of the government lawyers but also of the courts, and eliminates expenses incurred in the filing and prosecution of judicial actions.

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**. xxx

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The second paragraph of Section 4 of the 1997 NIRC, providing for the exclusive appellate jurisdiction of the CTA as regards the CIR's decisions on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed thereto, or other matters arising under NIRC, is in conflict with PD 242. Under PD 242, **all** disputes and claims **solely** between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards **private entities and the BIR**, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are **all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.

Furthermore, it should be noted that the 1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges. **On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities**. xxx

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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 intragovernmental 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. (*Emphasis and italics in the original, underscoring supplied, citations omitted)*

Thus, the Supreme Court has declared in the PSALM case, in no uncertain terms, that **all controversies involving government offices, bureaus, agencies and instrumentalities, including GOCCs, fall within the initial jurisdiction of the DOJ - such interpretation must be respected by all courts.**[15] Unless and until modified by the Supreme Court *En Banc,* the interpretation of PD 242 in the PSALM case should be applied in determining the proper forum with jurisdiction to resolve disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government.[16]

In the instant case, petitioner Davao City Water District insists that it is a GOCC,[17] citing the case of *Davao City Water District, et al. v. CSC,*[18] where the Supreme Court ruled that local water districts are GOCCs with original charter.[19] The Supreme Court later reiterated that local water districts are GOCCs with special charter in *Mendoza v. Commission on Audit.*[20] On the other hand, respondent CIR represents the BIR, another government agency. Clearly, this is a dispute between two government entities, and as such, following the ruling in the PSALM case, this Court has no jurisdiction.

**WHEREFORE**, the Petition for Review is **DENIED** for lack of jurisdiction.

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

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

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[15] *Metropolitan Waterworks and Sewerage System (MWSS) v. Commissioner of Internal Revenue,* CTA Case no. 9599, February 22, 2018.
[16] *Id.*
[17] *Rollo*, Petition for Review, p. 16.
[18] G.R. No. 92237-38, September 13, 1991.
[19] *Rollo*, Petition for Review, p. 16.
[20] G.R. No. 195395, September 10, 2013 citing *Feliciano v. Commission on Audit, et al.*, G.R. No. 147402, January 14, 2004.

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**, with concurring Opinion
Presiding Justice

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

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

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

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

(With Dissenting Opinion)
**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

## 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

REPUBLIC OF THE PHILIPPINES
***Court of Tax Appeals***
QUEZON CITY

# ***EN BANC***

**DAVAO CITY WATER DISTRICT,**
*Petitioner,*

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA EB No. 1822**
(CTA Case No. 8979)

Present:

**DEL ROSARIO,** *P.J.,*
**CASTANEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
OCT 28 2019
11:13 a.m.

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# CONCURRING OPINION

***DEL ROSARIO, P.J.:***

I concur that this Court is bereft of jurisdiction to take cognizance of the present case as it involves a dispute solely between a government-owned and controlled corporation and a government bureau, consistent with the categorical pronouncement of the Supreme Court in ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue***[1] *("PSALM").*

Considering the implication of the pronouncement in *PSALM* to cases pending before the Court of Tax Appeals (CTA) involving *intra-governmental disputes or controversies,* I find it necessary to re-visit the development of jurisprudence anent the application of

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

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***,[2] 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 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."

In **2005**, the Supreme Court *En Banc* promulgated ***Philippine National Oil Company vs. The Honorable Court of Appeals et al.***[3] ***("PNOC")*** declaring that CTA has jurisdiction to resolve controversies falling under 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)

[2] G.R. No. 86625, December 22, 1981.

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

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)

In **2016**, the First Division of the Supreme Court, in ***Commissioner of Internal Revenue vs. Secretary of Justice and Philippine Amusement and Gaming Corporation***[4] ***("PAGCOR")***, 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*.[5]

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[4] G.R. No. 177387, November 9, 2016.
[5] "ARTICLE VIII
JUDICIAL DEPARTMENT
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(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

**As *PNOC*** - - the case cited in the Dissenting Opinion of Honorable Associate Justice Maria Rowena Modesto-San Pedro - - **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 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.**
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> Xxx. 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.
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> 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.

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or in division may be modified or reversed except by the court sitting en banc." (Boldfacing supplied)

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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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.**" (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 Department of Justice (DOJ) - - such interpretation must be respected by all courts.

I am not unaware that in the following cases, cited by Honorable Associate Justice Maria Rowena Modesto-San Pedro in her Dissenting Opinion, the jurisdiction of the CTA was apparently recognized, albeit the controversies therein involved government-owned and controlled corporations and the Bureau of Internal Revenue: (i) ***Philippine Amusement and Gaming Corporation vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation***,[6] where the Supreme Court remanded the case to the CTA for the determination of the final amount to be paid by PAGCOR; (ii) ***Bases Conversion and Development Authority vs. Commissioner of Internal Revenue***,[7] where the Supreme Court remanded the case to the CTA for further proceedings regarding Bases Conversion and Development Authority's claim for refund of Creditable Withholding Tax; and, (iii) ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue***,[8] where the Supreme Court granted PSALM's petition and reversed and set aside the decision of the CTA which found PSALM liable to pay deficiency value-added tax for the taxable year 2008, inclusive of the deficiency interest and delinquency interest.

In ***Commissioner of Internal Revenue vs. San Roque Power Corporation / Taganito Mining Corporation vs. Commissioner of***

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[6] G.R. No. 210689 and G.R. Nos. 210704 & 210725, November 22, 2017.
[7] G.R. No. 205925, June 20, 2018.
[8] G.R. No. 226556, July 3, 2019.

***Internal Revenue / Philex Mining Corporation vs. Commissioner of Internal Revenue***,[9] the Supreme Court was categorical in holding that an issue which was not passed upon has no value as precedent. Said the Supreme Court:

> **"Any issue, whether raised or not by the parties, *but not passed upon by the Court,* does not have any value as precedent**. As this Court has explained as early as 1926:
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> > It is contended, however, that the question before us was answered and resolved against the contention of the appellant in the case of *Bautista vs. Fajardo* (38 Phil. 624). In that case no question was raised nor was it even suggested that said section 216 did not apply to a public officer. That question was not discussed nor referred to by any of the parties interested in that case. It has been frequently decided that the fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity, where that question is squarely and properly raised and presented. **Where a question passes the Court *sub silentio*, the case in which the question was so passed is not binding on the Court (*McGirr vs. Hamilton and Abreu*, 30 Phil. 563), nor should it be considered as a precedent**. (*U.S. vs. Noriega and Tobias*, 31 Phil. 310; *Chicote vs. Acasio*, 31 Phil. 401; *U.S. vs. More*, 3 Cranch [U.S.] 159, 172; *U.S. vs. Sanges*, 144 U.S. 310, 319; *Cross vs. Burke*, 146 U.S. 82.) For the reasons given in the case of *McGirr vs. Hamilton and Abreu*, supra, the decision in the case of *Bautista vs. Fajardo*, supra, can have no binding force in the interpretation of the question presented here. (Emphasis supplied)"

A careful perusal of the facts involved in the aforementioned cases, however, would reveal that they cannot be relied upon as precedent regarding the matter of administrative settlement as the issues therein did not involve the jurisdiction of the CTA on *intra-governmental disputes or controversies* nor to the development of jurisprudence anent the application of PD No. 242 *vis-à-vis* RA No. 1125, as amended. Truth to tell, *PSALM* remains the jurisprudence that categorically settled the jurisdiction of the DOJ on *intra-governmental disputes or controversies*.

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[9] G.R. Nos. 187485, 196113, 197156, February 12, 2013.

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.*

All told, I **CONCUR** with the *ponencia*.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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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.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***EN BANC***

**DAVAO CITY WATER DISTRICT,**
*Petitioner,*

**CTA EB NO. 1822**
(CTA Case No. 8979)

**Present:**

**Del Rosario,** *P.J.,*
**Castañeda, Jr.,**
**Uy,**
**Fabon-Victorino,**
**Mindaro-Grulla,**
**Ringpis-Liban,**
**Manahan,**
**Bacorro-Villena,** *and*
**Modesto-San Pedro,** *JJ.*

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

Promulgated:
OCT 28 2019
11:13 a.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 Petition for Review. 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.

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

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.**
> >
> > Section 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

[2] C.T.A. EB CASE NO. 1486, February 19, 2018.

> (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; 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; 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. 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 and decide on the merits of the case.

All told, I vote to **AFFIRM** the September 5, 2017 Decision and February 21, 2017 Resolution of the First Division.

Ma. Belen S. —

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**REPUBLIC OF THE PHILIPPINES**
*Court of Tax Appeals*
**QUEZON CITY**

*En Banc*

**DAVAO CITY WATER DISTRICT,**
*Petitioner,*

**CTA *EB* NO. 1822**
*(CTA Case No. 8979)*

-*versus*-

Present:
**DEL ROSARIO, P.J.,**
**CASTAÑEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

Promulgated:
OCT 2 8 2019
11:13a.m.

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## *DISSENTING OPINION*

***MODESTO-SAN PEDRO, J.:***

I respectfully dissent from the Decision penned by my honorable colleague, Associate Justice Catherine T. Manahan, denying the present Petition for Review for lack of jurisdiction pursuant to ***Presidential Decree (PD) No. 242*** and the case of ***Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue (PSALM)***[1]. It is my humble opinion that the Court of Tax Appeals (CTA) has jurisdiction over the case, by virtue of the ***1997 National Internal Revenue Code (1997 NIRC)***, and ***Republic Act (RA) No. 1125***, as amended by ***RA No. 9282***.

The ***1997 NIRC*** vests in the Commissioner of Internal Revenue (CIR) the power to decide refunds of internal revenue taxes (including franchise taxes) subject to the exclusive appellate jurisdiction of the CTA, without exception. ***Section 4 of the 1997 NIRC*** provides that:

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

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> "The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the **exclusive** appellate jurisdiction of the Court of Tax Appeals."

Here, petitioner filed a Petition for Franchise Tax Refund for the year 2012 before respondent[2]. Since its claim was not acted upon by respondent, petitioner filed the Petition for Review which was heard by the Court in Division. The CTA, acting through its Division, certainly had jurisdiction to hear the case, as expressly provided by ***RA No. 9282***, to wit:

> "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 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;"

In holding that the Court had no jurisdiction over the case, the respondent relies on ***PD No. 242***, which reads as follows:

> "CHAPTER 14
> CONTROVERSIES AMONG GOVERNMENT OFFICES AND CORPORATIONS
>
> Section 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.

[2] *Rollo*, CTA Case No. 8979, Vol. 1, pp. 199.

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> 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."[3]

Even the most cursory reading of such provisions in ***PD No. 242*** would lead us to see that the same merely serves as a general rule that all disputes, claims, and controversies between National Government and/or GOCCs shall be settled by the Secretary of Justice. On the other hand, the later issued ***RA No. 9282*** works as an exception; that is, when it comes to the inaction and decisions of the CIR 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 or other laws administered by the Bureau of Internal Revenue, the CTA shall have jurisdiction.

Jurisdiction over tax cases between the National Government and/or GOCCs is either with the CTA or with the DOJ; it cannot be with both. Therefore, "[e]ither 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."[4] Further emphasizing this need to reconcile contradictory laws is ***Section 17 of RA No. 9282***, which states, to wit:

> **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.

Accordingly, between the 1989 ***PD No. 242*** and the 2004 ***RA No. 9282***, the latter must prevail.

It is instructive that in ***PNOC v. CA, et. al. (PNOC)***[5], the Supreme Court considered ***PD No. 242*** as a general law and ***RA No. 1125*** as a special law. It expounded, thus:

> "When there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. The following rule should principally govern instead:
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> > Specific legislation upon a particular subject is not affected by a general law upon the same subject

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[3] Underscoring ours.
[4] Ruben E. Agpalo, Statutory Construction, Fifth Edition 2003, p. 272, citing City of Naga v. Agna, G.R. No. 36049, 31 May 1976, 71 SCRA 176 and Erana v. Vergel de Dios, 85 Phil. 17 (1947).
[5] G.R. No. 109976, 26 April 2005.

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> unless it clearly appears that the provisions of the two laws are so repugnant that the legislators must have intended by the later to modify or repeal the earlier legislation. The special act and the general law must stand together, the one as the law of the particular subject and the other as the general law of the land. (Ex Parte United States, 226 U. S., 420; 57 L. ed., 281; Ex Parte Crow Dog, 109 U. S., 556; 27 L. ed., 1030; Partee vs. St. Louis & S. F. R. Co., 204 Fed. Rep., 970.)
>
> Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a conflict. (Crane v. Reeder and Reeder, 22 Mich., 322, 334; University of Utah vs. Richards, 77 Am. St. Rep., 928.)

It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails – Generalia specialibus non derogant.

Sustained herein is the contention of private respondent Savellano that P.D. No. 242 is a general law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies. It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines. On the other hand, Rep. Act No. 1125 is a special law dealing with a specific subject matter – the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein.

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."[6]

The records would show that the petitioner filed its Petition with the First Division on 21 January 2015[7], before the 8 August 2017 promulgation of the Decision in the ***PSALM*** case. The prevalent ruling at the time, therefore, was that of ***PNOC***.

Further, not all controversies between the National Government and GOCCs fall under the provisions of ***PD No. 242***, which does not intrude into the jurisdiction of regular courts (the CTA for tax matters, in this case). The Supreme Court went as far as declaring that ***PD No. 242*** only prescribes an administrative procedure for the settlement of certain types of disputes between and among the National Government and/or GOCCs. Indeed, in ***PHIVIDEC, et. al. v. Hon. Alejandro M. Velez (PHIVIDEC)***[8], the High Court explained, as follows:

> "Contrary to the opinion of the lower court, P.D. No. 242 is not unconstitutional. It does not diminish the jurisdiction of courts but only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including government-owned or controlled corporations, so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements. The procedure is not much different, and no less desirable, than the arbitration procedures provided in Republic Act No. 876 (Arbitration Law) and in Section 26, R.A. 6715 (The Labor Code). It is an alternative to, or a substitute for, traditional litigation in court with the added advantage of avoiding the delays, vexations and expense of court proceedings. Or, as P.D. No. 242 itself explains, its purpose is "the elimination of needless clogging of court dockets to prevent the waste of time and energies not only of the government lawyers but also of the courts, and eliminates expenses incurred in the filing and prosecution of judicial actions." (p. 21, Rollo.)
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> The notion that an administrative procedure such as is provided in P.D. No. 242, for the settlement of quarrels between two administrative offices, departments, agencies, or government corporations, would "emasculate" the jurisdiction of courts, is erroneous. In fact, Section 1, subpar. (a), Rule 20 of the Rules of Court makes a pre-trial mandatory so that the parties to a suit may meet in conference to consider, among other matters, "the possibility of . . . a submission to arbitration."
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> P.D. No. 242 is a valid law prescribing an administrative arbitration procedure for certain disputes among offices, agencies and

[6] Underscoring ours.
[7] *Rollo*, CTA Case No. 8979, Vol. 1, p. 24.
[8] G.R. No. 84295, 18 July 1991.

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instrumentalities under the executive control and supervision of the President of the Philippines. Since PVAC filed Civil Case No. 11157 against PHIVIDEC and PIA without first passing through the administrative channel, the judicial action was premature for non-exhaustion of administrative remedies, hence, dismissible on that account (Chia vs. Acting Collector of Customs, 177 SCRA 755)."

***PHIVIDEC*** was reiterated in ***Orion Water District, et. al. v. GSIS***[9], *viz.*:

"As properly held by the CA, the provisions of E.O. No. 292 are inapplicable in the instant case. It bears to stress that not all controversies between or among government offices, departments or instrumentalities fall under the mentioned provisions of E.O. No. 292. To fully understand the scope of the law, reference must be made to Presidential Decree (P.D.) No. 242, the precursor of Chapter 14, Book IV of E.O. No. 292, from which the entirety of the provisions in question was lifted. Under P.D. No. 242, it was clearly articulated that it only applies to particular instances of disputes among government offices. Section 1 thereof states:

> SEC. 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. (Emphasis ours)

That the law is not all-encompassing was elaborated in Philippine Veterans Investment Development Corporation (PHIVIDEC) v. Judge Velez, where the Court emphasized that P.D. No. 242 applies only to certain cases of disputes. It does not intrude into the jurisdiction of regular courts as it "only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including [GOCCs], so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements."

Section 1 of P.D. No. 242 is now Section 66, Chapter 14, Book IV of E.O. No. 292. Although there was a noticeable change in the language of the law, there was no indication of an intention to broaden its scope far larger than the original law. Section 66 reads as follows:

[9] G.R. No. 195382, 15 June 2016.

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> 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.
>
> Following the ejusdem generis rule on statutory construction, disputes that should be referred to administrative arbitration must relate to the interpretation and application of statutes, contracts or agreements, or any other cases of similar nature. The usage of the phrase "such as those arising from the interpretation and application of statutes, contracts or agreements" in the provision means that the situation must be held similar or analogous to those expressly enumerated in the law in question.
>
> It does not need further elaboration that the instant case does not partake of the instances contemplated in Section 66. The complaint filed by GSIS does not concern the interpretation of a law, contract or agreement between government agencies. It is a complaint for collection of sum of money, specifically to unremitted premium contributions which by law, the OWD, as the employer, is mandated to deliver to GSIS within the prescribed period of time. There is no obscure question of law or ambiguous provision of a contract involved that resulted to a discord between GSIS and OWD, which could have warranted the application of Section 66. On the contrary, the law is unequivocal with respect to the duty of GSIS to ensure the prompt collection of contributions and OWD's responsibility, as an employer, to deduct and remit contributions to the system. Unfortunately, OWD reneged in its obligation and refused to comply despite repeated notices; hence, the filing of a complaint for collection of unremitted contributions by GSIS."

The rationale for the exclusive jurisdiction of the CTA over all tax cases may be gleaned from a reading of the Abstract of ***House Bill No. 6673***. It shows that ***RA No. 9282*** was enacted to avoid delays in the final disposition of tax cases, to effectively change and maximize the development of jurisprudence and judicial precedence on all tax matters, and to improve tax collection, *viz.*:

> "The bill seeks to lodge with the Court of Tax Appeals (CTA) both criminal and civil jurisdictions over tax and customs cases in order to avoid needless delays in the final disposition of such cases. The vesting of both criminal and civic jurisdictions of a tax case in

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one court will likewise effectively change and maximize the development of jurisprudence and judicial precedence on all tax matters which is of vital importance to revenue administration. The bill also seeks to elevate the rank of the CTA to the level of the Sandiganbayan, widen its organizational structure and expand its jurisdiction. The approval of the bill is seen to improve the tax collection efficiency of the Bureau of Internal Revenue, the Bureau of Customs and other revenue collecting agencies of the government."[10]

This expertise of the CTA in tax matters was stressed in ***Macario Lim Gaw, Jr. v. CIR***[11], where it was stated that "CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems." This was, in fact, the basis of the Dissent of the honorable retired Justice Mariano del Castillo in the ***PSALM*** case:

> "xxx Unlike the Secretary of Justice, the BIR and the CTA have developed expertise on tax matters. It is only but logical that they should have exclusive jurisdiction to decide on these matters. The authority of the Secretary of Justice under PD 242 to settle and adjudicate all disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, therefore, does not include tax disputes, which are clearly under the jurisdiction of the BIR and the CTA."

All told, the CTA is in the best position to handle tax cases effectively and efficiently due to its expertise on the subject. To succumb jurisdiction to the DOJ would not only be illogical; it would lead to inefficiencies in the system as well.

It must be pointed out that the Supreme Court has consistently recognized the CTA's jurisdiction over cases involving controversies among government offices and corporations. The High Court, in a 2016 case entitled ***Commissioner of Internal Revenue v. Secretary of Justice, and Philippine Amusement and Gaming Corporation***[12], abided by the jurisprudence set by ***PNOC***, stating, under no uncertain terms, that the Secretary of Justice has no jurisdiction to review disputed assessments despite PD 242, jurisdiction of which belongs exclusively to CTA.

In a 2017 case also involving PAGCOR, which is a duly created government instrumentality, the Supreme Court remanded to the CTA the determination of the final tax amounts to be paid by PAGCOR.[13]

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[10] Underscoring ours.
[11] G.R. No. 222837, 23 July 2018.
[12] G.R. No. 177387, 9 November 2016.
[13] PAGCOR v. CIR, G.R. No. 210689, 22 November 2017.

In the 2018 case of ***Bases Conversion and Development Authority v. Commissioner of Internal Revenue***[14], the Supreme Court declared that BCDA is a government instrumentality vested with corporate powers and, in fact, remanded the case to the CTA for further proceedings, a clear indication that it admits the CTA's jurisdiction over such a government entity.

Just in March of this year, the Supreme Court ruled in a case before it that the Privatization and Management Office, being an agent of the national government, is not required to put up a bond because to do so would be to indirectly require the state to submit such bond; and it ordered the CTA to release the same.[15] Most recently, in a July 2019 case involving PSALM itself entitled ***PSALM v. Commissioner of Internal Revenue***[16], the Supreme Court cancelled an assessment made by respondent without divesting the CTA of its jurisdiction.

Clearly, to date, and despite the ruling in ***PSALM***, the Supreme Court acknowledges the CTA's exercise of jurisdiction over tax cases between the National Government and/or GOCCs.

Finally and critically, to rule that the CTA has no jurisdiction over tax cases between and among the National Government and/or GOCCs will create a dangerous precedent and raise the question as to whether similar cases already decided by the CTA should be voided. We must not lose sight of the prevailing rule that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void.[17]

Premises considered, I vote for the Court En Banc to *(1)* exercise jurisdiction over the present case and *(2)* to decide the case on the merits.

**MARIA ROWENA MODESTO-SAN PEDRO**
**Associate Justice**

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[14] G.R. No. 205925, 20 June 2018.
[15] Privatization and Management Office v. CTA and City Government of Tacloban, G.R. No. 211839, 18 March 2019.
[16] G.R. No. 226556, 3 July 2019.
[17] Sebastian v. Spouses Cruz, et al., G.R. No. 220940, 20 March 2017.