REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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PHILIPPINE PHARMA PROCUREMENT, INC. (FORMERLY: PITC PHARMA, INC.), Petitioner,	**CTA EB No. 2096** (CTA Case No. 9734)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
BUREAU OF INTERNAL REVENUE, REPRESENTED BY COMMISSIONER CAESAR R. DULAY, Respondent.	***Promulgated:*** JAN 2 5 2021 3:52 p.m.

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DECISION

UY, J.:

This is a *Petition for Review*[1] filed on July 4, 2019 by Philippine Pharma Procurement, Inc. (Formerly: PITC Pharma, Inc.) against the Bureau of Internal Revenue, represented by Commissioner Caesar R. Dulay, seeking to reverse and set aside the Resolutions dated March 7, 2019 and June 13, 2019, rendered by the Second Division of this Court, in CTA Case No. 9734, entitled, *"Philippine Pharma Procurement, Inc. (formerly: PITC Pharma, Inc.), Petitioner vs. Bureau of Internal Revenue, represented by Commissioner Caesar*

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[1] EB Docket, pp. 1 to 18.

R. Dulay, Respondent." The dispositive portions thereof respectively read as follows:

Resolution dated March 7, 2019:

> "**WHEREFORE,** premises considered, respondent's **Motion to Dismiss** is **GRANTED.**
>
> **SO ORDERED."**

Resolution dated June 13, 2019:

> "**WHEREFORE**, in view of the foregoing, petitioner's **Motion for Reconsideration (of the 7 March 2019 Resolution)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Philippine Pharma Procurement, Inc. (PPPI) is a government-owned and controlled corporation (GOCC) attached to the Department of Trade and Industry (DTI). It is 60% owned by the Philippine International Trading Corporation and 40% owned by the National Development Company. Its primary mandate is to be the lead coordinating agency to make quality medicines available, affordable, and accessible to the greater masses of Filipinos.[2] Its office is located at 2nd Floor, NDC Building, 116 Tordesillas Street, Salcedo Village, Makati City.[3]

Respondent Commissioner of Internal Revenue (CIR) heads the Bureau of Internal Revenue (BIR), and is empowered to perform the duties of his office, including, among others, the power to decide, cancel, and abate tax liabilities pursuant to Section 204 (B) of the NIRC, R.A. No. 8424, as amended.[4]

On December 15, 2017, PPPI filed its *Petition for Review*[5] before the Court in Division, assailing the BIR's Decision dated November 6, 2017, affirming the Final Decision on Disputed

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[2] Docket (CTA Case No. 9734), Vol. I, p. 11.
[3] EB Docket, p. 1.
[4] EB Docket, p. 2.
[5] Docket (CTA Case No. 9734), Vol. I, pp. 10 to 29.

Assessment on the deficiency income tax assessment for TY 2007 against petitioner.

On March 6, 2018, the BIR filed its *Answer*[6] interposing, among others, the following special and affirmative defenses:

1. The case pertains to a tax dispute between government agencies, including GOCCs, involving purely questions of law. In such a case, the Secretary of Justice has jurisdiction to settle or adjudicate the tax dispute.

2. If a court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case, and the court cannot decide on the merits. Thus, the Petition for Review should be dismissed for lack of jurisdiction.

3. Pursuant to Section 34 (D) (1) (a) of the NIRC, losses should be sustained during the taxable year. Thus, the expired medicines should have been destroyed during the same year, in order to be allowed as a deduction.

4. Assessments are *prima facie* presumed correct and made in good faith, and the taxpayer has the duty of proving otherwise.

5. Taxes are the lifeblood of the government and should be calculated without unnecessary hindrance.

The case was set for pre-trial conference on May 24, 2018, and only the BIR filed its Pre-Trial Brief.[7] In view of the absence of PPI's counsel during the Pre-Trial Conference, and for failure of petitioner to file its Pre-Trial Brief, the oral motion of the BIR's counsel for the dismissal of the case on the ground of failure to prosecute was granted, and the Petition for Review was dismissed on May 24, 2018.[8]

On May 29, 2018, the Court in Division received a copy of the *Entry of Appearance (With Motion to Cancel Pre-Trial)*, filed by GOCC as counsel for PPPI, through registered mail on May 22, 2018.[9] Thereafter, PPPI filed its *Motion for Reconsideration (of the 24 May*

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[6] Docket (CTA Case No. 9734), Vol. I, pp. 206 to 209.
[7] Docket (CTA Case No. 9734), Vol. I, pp. 238 to 241.
[8] Docket (CTA Case No. 9734), Vol. I, p. 245.
[9] Docket (CTA Case No. 9734), Vol. I, pp. 253 to 257.

2018 Order)[10] on June 18, 2018, without the BIR's comment, despite notice, as per Records Verification[11] dated July 16, 2018.

In the Resolution[12] dated August 3, 2018, PPPI's *Motion for Reconsideration* was granted, and the Pre-Trial Conference was held on October 11, 2018.

On November 6, 2018, the BIR filed a *Motion to Dismiss,*[13] alleging *inter alia,* that the applicable law between the parties is P.D. No. 242, and the Court in Division does not have jurisdiction to hear and decide the case.

For its part, PPPI filed its *Opposition (to the Motion to Dismiss)*[14] on January 11, 2019, alleging that the case of *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue,*[15] (*PSALM* case) does not apply, since the factual circumstances that gave rise to that case does not exist in connection with PPPI's Petition for Review.

In the assailed Resolution[16] dated March 7, 2019, the Court in Division granted the BIR's Motion to Dismiss for lack of jurisdiction.

PPPI filed its *Motion for Reconsideration (of the 7 March 2019 Resolution)*[17] on April 3, 2019, without the BIR's comment, as per Records Verification[18] dated May 9, 2019.

In the Resolution[19] dated June 13, 2019, the Court in Division denied the Motion for Reconsideration for lack of merit.

Undaunted, PPPI filed the instant *Petition for Review*[20] on July 4, 2019. In the Resolution[21] dated November 7, 2019, the BIR was

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[10] Docket (CTA Case No. 9734), Vol. I, pp. 261 to 266.
[11] Docket (CTA Case No. 9734), Vol. I, p. 270.
[12] Docket (CTA Case No. 9734), Vol. I, pp. 273 to 278.
[13] Docket (CTA Case No. 9734), Vol. I, pp. 441 to 445.
[14] Docket (CTA Case No. 9734), Vol. II, pp. 448 to 461.
[15] G.R. No. 198146, August 8, 2017.
[16] EB Docket, pp. 20 to 26.
[17] Docket (CTA Case No. 9734), Vol. II, pp. 470 to 483.
[18] Docket (CTA Case No. 9734), Vol. II, p. 486.
[19] EB Docket, pp. 27 to 29.
[20] EB Docket, pp. 1 to 18.
[21] EB Docket, pp. 64 to 65.

directed to file its Comment to the Petition for Review, within ten (10) days from notice. Respondent BIR, however, failed to file the required Comment, as per Records Verification[22] dated January 14, 2020. In view thereof, the instant Petition for Review was submitted for Decision on February 7, 2020.[23] Hence, this Decision.

ISSUE

Petitioner PPPI raises a sole issue for the Court *En Banc's* resolution, to wit:

> "WHETHER THE CTA HAS JURISDICTION TO HEAR, TRY AND DECIDE THE PETITION FILED BY PPPI."[24]

Petitioner's arguments:

PPPI contends that the *PSALM* case does not apply, since the factual circumstances that gave rise to that case does not exist in connection with PPPI's Petition.

In the *PSALM* case, the filing of a petition for the settlement of claims before the Department of Justice (DOJ), pursuant to P.D. No. 242, as amended by Sections 66 to 71, Chapter 14, Book IV of the 1987 Administrative Code is not an appeal from the BIR assessment, but an original action. It was an arbitration proceeding agreed upon by PSALM and the BIR pursuant to the Memorandum of Agreement (MOA) dated August 30, 2007, executed together with the National Power Corporation (NPC). In this case, however, PPPI stresses that there was no MOA between PPPI and the CIR.

Moreover, according to PPPI, R.A. No. 9282 and R.A. No. 9503 are later laws that effectively established the legislative intent to retain the CTA's exclusive appellate jurisdiction, even if the party involved is a government agency.

Considering that PPPI protested the CIR's assessment, and the assessment ripened into a final decision on disputed assessment, the remedy provided by law is allegedly an appeal to the CTA.

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[22] EB Docket, p. 66.
[23] EB Docket, pp. 68 to 69.
[24] EB Docket, p. 5.

Finally, PPPI avers that policy considerations weigh heavily in favor of the specialized expertise of the CTA.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Sections 66, 67, and 68 of Chapter 14, Book IV of Executive Order (E.O.) No. 292, otherwise known as the Administrative Code of 1987, lay down the guidelines in settling disputes, claims and controversies between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including GOCCs, to wit:

> "**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.
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> **SEC. 67.** ***Disputes Involving Questions of Law.*** — **All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as *ex officio* legal adviser of all government-owned or controlled corporations**. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.
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> **SEC. 68.** ***Disputes Involving Questions of Fact and Law.*** — **Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:**
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> (1) **The Solicitor General**, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as

government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and

(2) **The Secretary of Justice**, in all other cases not falling under paragraph (1)." *(Emphases supplied)*

Based on the foregoing provisions, cases involving only questions of law, between and among departments, bureaus, offices, agencies and instrumentalities of the National Government, including GOCCs, shall be submitted to and settled or adjudicated by the Secretary of Justice (SOJ). On the other hand, cases involving mixed questions of law and of fact, or purely factual issues shall be submitted to the Solicitor General if the latter is the principal law officer or general counsel of the parties, otherwise, the issues shall be submitted to and resolved by the SOJ.

In the *PSALM* case, the interpretation of the foregoing provisions, and its predecessor, P.D. No. 242, which has substantially the same provisions, was elucidated upon by the Supreme Court *En Banc*, as follows:

"The primary issue in this case is whether the DOJ Secretary has jurisdiction over OSJ Case No. 2007-3 which involves the resolution of whether the sale of the Pantabangan-Masiway Plant and Magat Plant is subject to VAT.

We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists.

However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants**. There is no question that original jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved**. As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. Sections 1, 2, and 3 of PD 242 read:

> ***Section 1.*** **Provisions of law to the contrary notwithstanding, *all disputes, claims and controversies* solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter**: Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree.
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> ***Section 2.*** **In all cases involving only questions of law, the same *shall* be submitted to and settled or adjudicated by the Secretary of Justice**, as Attorney General and ex officio adviser of all government owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. **His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.**
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> ***Section 3.*** Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

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> (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;
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> (b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and
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> (c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b). x x x
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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 controlled corporations, is not merely permissive but mandatory and imperative. <u>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</u>.
>
> The law is clear and covers <u>'*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.'</u> <u>**When the law says 'all disputes, claims and controversies solely' among government agencies, the law means *all, without exception.***</u> Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

The <u>**purpose**</u> 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. . .**

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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 decision on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC, is in conflict with PD 242. Under PD 242, <u>**all**</u> 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.

<u>**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.**</u>

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

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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.
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> xxx xxx xxx
>
> 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. . ."

From the foregoing jurisprudential pronouncements, it is established that where the disputing parties are ***all*** public entities, the case shall be governed by PD No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987), which requires that it shall be administratively settled or adjudicated in the manner provided therein, *i.e.,* the matter shall be brought either before the Secretary of Justice or the Solicitor General, as the case may be.

Moreover, the Supreme Court, sitting *En Banc,* was categorical in ruling that when the law says *'all disputes, claims and controversies solely'* among government agencies, **the law means "all", without exception**. It was, however, emphasized that PD No. 242 will only apply when all the parties involved are purely government offices and/or GOCCs.

The Supreme Court *En Banc,* likewise noted the conflicting provisions of the NIRC of 1997 and PD No. 242. Under PD No. 242, it is provided that all disputes and claims solely between government agencies and offices, including GOCCs are within the jurisdiction of the SOJ, the Solicitor General, or the Government Corporate

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Counsel, as the case may be. On the other hand, Section 4 of the NIRC of 1997, as amended, provides that the CTA has exclusive appellate jurisdiction as regards petitioner's decision on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC.

In order to harmonize these seemingly conflicting laws, the Supreme Court adopted the following interpretation in cases involving 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, to wit:

1. As regards ***private entities and the BIR***, the decision of petitioner is subject to the exclusive appellate jurisdiction of this Court, in accordance with Section 4 of the NIRC; and

2. Where the ***disputing parties are all public entities***, the case shall be governed by PD No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987), where the dispute 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.

In fact, the foregoing summation of rules was subsequently affirmed and applied in the case of *Commissioner of Internal Revenue vs. The Secretary of Justice and Metropolitan Cebu Water District (MCWD)*,[25] where the Supreme Court likewise upheld the jurisdiction of the SOJ over the tax dispute between the BIR and Metropolitan Cebu Water District, a local water district, pursuant to PD No. 198, also known as the Provincial Water Utilities Act of 1973. Thus, unless and until the foregoing interpretation is modified by the Supreme Court, sitting *En Banc*, this Court is mandated to apply the same, as judicial decisions applying or interpreting the laws or the Constitution shall form a part of the law of the land.[26]

In this case, it is undisputed that **both** of the parties involved are **public entities**. Petitioner PPPI, is a GOCC,[27] attached to DTI, while respondent BIR, is a government office.

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[25] G.R. No. 209289, July 9, 2018.
[26] *See* Article 8, Civil Code of the Philippines.
[27] Docket (CTA Case No. 9734), Vol. I, p. 11. MD

Considering that both parties are public entities under the Executive Branch of the government, it is evident that the instant case should be governed by PD No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987) and not by the NIRC of 1997, as amended. Hence, jurisdiction over the case vests with the SOJ, and not with this Court.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Resolutions dated March 7, 2019 and June 13, 2019, rendered by the Second Division of this Court, in CTA Case No. 9734 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

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

CATHERINE T. MANAHAN
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

PHILIPPINE PHARMA PROCUREMENT, INC. (FORMERLY: PITC PHARMA, INC.), *Petitioner,*	**CTA EB No. 2096** (CTA Case No. 9734)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
BUREAU OF INTERNAL REVENUE, REPRESENTED BY COMMISSIONER CAESAR R. DULAY, *Respondent.*	Promulgated: JAN 2 5 2021 3:52 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my learned colleague, Honorable Associate Justice Erlinda P. Uy.

I, however, wish to address the following:

First – The fact that the Court of Tax Appeals (CTA) is vested by Republic Act (RA) No. 1125, as amended by RA No. 9282, with exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, among others, does not reasonably justify non-observance of Presidential Decree (PD) No. 242 *vis-à-vis* Section 70, Chapter 14, Book IV of Executive Order (EO) No. 292.

Truth be told, Batas Pambansa (BP) Blg. 129 vests exclusive original jurisdiction over specified cases to the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, Regional Trial Courts and the Court of Appeals. Yet, the Supreme Court, in *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*[1] *("PSALM")*, emphasized that controversies between or among any government entities shall be administratively settled, mindful of the exclusive jurisdiction of courts, obviously in recognition of the Constitutional power of the President to control all executive departments, <u>bureaus</u>, and offices.

<u>Second</u> – While EO No. 292, *supra*, declares the decision of the President as **final**, and expectedly will not be assailed by any Office under him, it is inaccurate to say that no judicial remedy is available to the government entity involved in the controversy.

The Constitution is plain -- the Supreme Court is vested with original jurisdiction over petitions for certiorari, prohibition and mandamus,[2] all of which are available in instances where there is "<u>no appeal</u> nor any plain, speedy and adequate remedy in the ordinary course of law."

The judicial power of the Supreme Court includes the duty to settle actual controversies and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[3]

All told, I CONCUR with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] G.R. No. 198146, August 8, 2017.
[2] Section 5, Article VIII, 1987 Constitution.
[3] Section 1, Article VIII, 1987 Constitution.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE PHARMA PROCUREMENT, INC. (FORMERLY: PITC PHARMA, INC.), Petitioner,	**CTA EB NO. 2096** (CTA Case No. 9734)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
BUREAU OF INTERNAL REVENUE, REPRESENTED BY COMMISSIONER CAESAR R. DULAY, Respondent.	Promulgated: JAN 2 5 2021 3:52 p.m.

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DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With all due respect, I dissent from the majority ruling that the dispute between Petitioner, a government-owned and controlled corporation ("GOCC"), and the Bureau of Internal Revenue ("BIR") is not under the jurisdiction of the Court of Tax Appeals ("CTA"), and consequently, the dismissal of CTA Case No. 9734 is proper.

Indeed, following the provisions of Presidential Decree ("P.D.") No. 242[1], the Supreme Court in *Power Sector Assets and Liabilities Management Corporation v.*

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[1] Prescribing The Procedure For Administrative Settlement Or Adjudication Of Disputes, Claims And Controversies Between Or Among Government Offices, Agencies And Instrumentalities, Including Government-Owned Or Controlled Corporations, And For Other Purposes, July 09, 1973.

Commissioner of Internal Revenue[2] ("*PSALM v. CIR*") decreed that "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".

However, the doctrine in *PSALM v. CIR* should not be sweepingly applied to all cases involving disputes between government entities, especially in cases when the controversy is between a government agency or GOCC and the BIR.

For one, the factual antecedents in *PSALM v. CIR* differs in the case at bar. The controversy arose in the said case when BIR demanded payment of deficiency value-added tax ("VAT") from National Power Corporation ("NPC") arising from the sale of two power plants. NPC indorsed BIR's demand letter to Power Sector Assets and Liabilities Management Corporation ("PSALM"). Following this, the parties (*i.e.*, NPC, PSALM and BIR) executed a Memorandum of Agreement ("MOA"), agreeing on the following stipulations among others:

1) that NPC/PSALM shall remit under protest to the BIR basic VAT amounting to Php3,813,080,472.00,

2) that NPC/PSALM and BIR mutually undertake to seek final resolution of the issues on the deficiency VAT due by the appropriate courts or body, and

3) that any resolution in favor of NPC/PSALM by any appropriate court or body shall be immediately executory without necessity of notice or demand from NPC/PSALM. Moreover, a ruling from the Department of Justice ("DOJ") that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM.

PSALM did pay the deficiency VAT pursuant to the MOA it signed with BIR and the NPC. Thereafter, PSALM filed with the DOJ a petition for the adjudication of the dispute with the BIR to resolve the issue of whether the sale of the power plants should be subject to VAT. The DOJ ruled in favor of PSALM, declaring the deficiency VAT assessment null and void. The CIR then questioned the jurisdiction of the DOJ *via* a Petition for Certiorari with the Court of Appeals ("CA"), reasoning that the dispute involved tax laws administered by the BIR and therefore within the jurisdiction of the CTA. The CA declared that the DOJ committed grave abuse of discretion amounting to lack of jurisdiction in issuing the ruling for it was the CTA who had jurisdiction. PSALM appealed to the Supreme Court which decreed that the DOJ indeed has jurisdiction.

[2] G.R. No. 198146, August 08, 2017.

The instant petition, on the other hand, involves Petitioner, a GOCC, and the CIR, as head of the BIR. There was an assessment in the form of an FDDA, which was issued by the CIR as a result of its findings. As there was a final decision on the assessment on the part of the CIR, Petitioner found recourse to this Court pursuant to the judicial remedy laid down for taxpayers in Section 7(a)(1) of Republic Act ("R.A.") No. 1125, as amended by R.A. No. 9282.

In both cases, the taxpayers involved pursued remedies made available to them by law, given their factual circumstances. In *PSALM v. CIR*, there was no decision or inaction (on a disputed assessment) 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 Petitioner sought legal redress granted to them by law, specifically Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282, a law not even remotely discussed in *PSALM v. CIR* as focus therein was on Section 4[3] of the National Internal Revenue Code ("NIRC") of 1997, as amended, which dealt with the powers of CIR and not the exclusive appellate jurisdiction of the CTA. Accordingly, in the absence of any agreement between the parties on the voluntary submission of the tax issues to the DOJ, the default provision on CTA's exclusive appellate jurisdiction should prevail.

Thus, in *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, Commissioner of Internal Revenue, and Regional Director, Revenue Region No. 6*[4], the Supreme Court ruled that the petition for review before the CTA was filed out of time, despite the fact that the party with a tax issue with the CIR (*i.e.*, PAGCOR) is a GOCC. For that matter, the said case made no mention of P.D. No. 242, but it was unequivocally established that an appeal to an assessment issued by the BIR against a taxpayer, should be lodged with the CTA.

In ascertaining whether or not the court *a quo* has jurisdiction in this particular case, what ought to be weighed against P.D. No. 242 is R.A. No. 9282 which amended R.A. No. 1125. R.A. No. 9282, expanded the jurisdiction of the CTA and elevated its rank to the level of a collegiate court with special jurisdiction.

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[3] **SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*** - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

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.

[4] G.R. No. 208731, January 27, 2016.

The difference between a special law and a general law was discussed in *Liwayway Vinzons-Chato v. Fortune Tobacco Corporation*[5]:

> "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."[6]

P.D. No. 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 R.A. No. 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, as amended.

Furthermore, P.D. No. 242 was issued on July 09, 1973. The Administrative Code of 1997 which embodies the provisions of P.D. No. 242 took effect on November 24, 1989. On the other hand, R.A. No. 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. Therefore, R.A. No. 9282, the special law that was passed later, must be regarded as an exception to or qualification of P.D. No. 242, the prior general law.

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5 G.R. No. 141309, June 19, 2007.

6 *Emphasis supplied.*

From the foregoing, it would seem that P.D. No. 242 and the Administrative Code of 1987 have been repealed by R.A. No. 9282, albeit partially, 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.

And yet, 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.[7]

Similarly, 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 legibus est optimus interpretandi*, which means that the best method of interpretation is that which makes laws consistent with other laws. Accordingly, Courts of justice, when confronted with apparently conflicting statutes, should endeavor to reconcile them instead of declaring outright the invalidity of one against the other. Courts should harmonize them, if this is possible, because they are equally the handiwork of the same legislature.[8]

In light of the foregoing doctrine, the only way to harmonize two (2) seemingly contradictory laws is to declare that **when the controversy between or among government offices, agencies and instrumentalities, including GOCCs involve any of the matters listed in Section 7(a) of R.A. No. 9282, then it is the CTA who 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, as amended, may properly follow the procedure for administrative settlement or adjudication of disputes laid down in P.D. No. 242 and the Administrative Code of 1987.

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[7] Asturias Sugar Central, Inc. v. Commissioner of Customs and Court of Tax Appeals, G.R. No. L-19337, September 30, 1969 *citing* 50 Am. Jur. 358-359.

[8] AKBAYAN - Youth, SCAP, UCSC, MASP, KOMPIL II - Youth, ALYANSA, KALIPI, Patricia Q. Picar, Myla Gail Z. Tamondong, Emmanuel E. Ombao, Johnny Acosta, Archie John Talaue, Ryan Dapitan, Christopher Oarde, Jose Mari Modesto, Richard M. Valencia, Edben Tabucol v. Commission on Election, G.R. Nos. 147066 & 147179, March 26, 2001.

To say otherwise would have adverse effects not only on the jurisdiction of the CTA, but also on the remedies available to the CIR. This was discussed in the Dissenting Opinion of Justice Mariano C. Del Castillo in *PSALM v. CIR*:

> "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 President or the Secretary of Justice."

There can be no doubt that the CTA, by the very nature of its functions, has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study, consideration and resolution of tax and customs cases.[9] As such, it would be somewhat incongruent to conclude that the intention of the lawmakers is to divide the authority over tax appeal cases between taxpayers who are government offices, agencies and instrumentalities on one hand and private entities and individuals on the other. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases applies to both types of taxpayers.

From all the foregoing, I vote to **REVERSE** the Resolutions dated March 07, 2019 and June 13, 2019 in CTA Case No. 9734. The instant Petition for Review should be **GRANTED**. Accordingly, this case should be **REMANDED** to the Court of Tax Appeals Second Division for further proceedings on the merits of the assessment case.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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9 *See* Eastern Telecommunications Philippines, Inc. v. The Commissioner of Internal Revenue, G.R. No. 168856, August 29, 2012; Chevron Philippines, Inc. v. Commissioner of The Bureau Of Customs, G.R. No. 178759, August 11, 2008.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILIPPINE PHARMA PROCUREMENT, INC. (FORMERLY: PITC PHARMA, INC.),	**CTA *EB* NO. 2096** *(CTA Case No. 9734)*
Petitioner,	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
BUREAU OF INTERNAL REVENUE, REPRESENTED BY COMMISSIONER CAESAR R. DULAY,	Promulgated:
Respondent.	JAN 2 5 2021 3:52 p.m.

x -- x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With due respect, I dissent from the Decision penned by my honorable colleague, Associate Justice Erlinda P. Uy denying the present Petition for Review and affirming the assailed Decision and Resolution of the Second Division ("Court in Division") in CTA Case No. 9734, dated 07 March 2019 and 13 June 2019, respectively.

In dismissing the original Petition for Review for lack of jurisdiction, the Court in Division relied in ***Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue (hereinafter referred to as "PSALM Case")***[1] invoking ***Presidential Decree No. 242 ("PD No. 242")***.[2] In the said case, the Court in Division ruled that

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

[2] Prescribing the Procedure for Administrative Settlement or Adjudication of Disputes, Claims and Controversies Between or Among Government Offices, Agencies and Instrumentalities, Including Government-Owned or Controlled Corporations, and for Other Purposes, 9 July 1973.

the CTA has no jurisdiction over all disputes, claims, and controversies between departments, bureaus, offices, agencies, and instrumentalities of the National Government, including GOCCs (hereinafter referred to as "National Government Entities"). The specific portion relied upon by the Court in Division, is hereby quoted, to wit:

> Section 1. Provisions of law to the contrary notwithstanding, **all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.**
>
> Section 2. In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice, as Attorney General and ex officio legal adviser of all government-owned or controlled corporations and entities, in consonance with section 83 of the Revised Administrative Code. His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.
>
> Section 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:
>
> (a) The Solicitor General, with respect to disputes or claims controversies between or among the departments, bureaus, offices and other agencies of the National Government;
>
> (b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and
>
> (c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b).[3]

However, a perusal of the aforementioned provision proves that not all controversies between or among National Government Entities fall under the mandate of ***PD No. 242***. The case of ***Orion Water District, et. al. v. The Government Service Insurance System (hereinafter referred to as "Orion Case")***,[4] citing the case of ***Philippine Veterans Investment Development Corporation (PHIVIDEC), et. al. v. Judge Velez***[5] illustrates this point, to wit:

> "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.**

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[3] Emphasis supplied.
[4] G.R. No. 195382, 15 June 2016.
[5] G.R. No. 84295, 18 July 1991.

To fully understand the scope of tbe 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**:

> 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.

In the ***Orion Case***, the Supreme Court ratiocinated that ***PD No. 242*** is merely an administrative procedure which does not intend to cover all claims or disputes between and among the different National Government Entities. It is only limited to cases involving the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements.

Following the doctrine in the ***Orion Case***, it is clear that the herein case is not within the scope of ***PD No. 242*** since the original Petition for Review does not involve the interpretation of statute, contract or agreement but an issue questioning the correctness of the assessment issued by respondent against petitioner.

Furthermore, to affirm the ruling of the Court in Division dismissing the instant case for lack of jurisdiction runs against the constitutional mandate of the judiciary under ***Article VIII, Section 1 of the 1987 Constitution*** which states:

> "Section 1. The **judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law**.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[6]

Judicial Power is defined as "the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights".[7] The concept behind the same was further elaborated by the Supreme Court in the case of ***Lopez v. Roxas***,[8] to wit:

[6] Emphasis supplied.
[7] Lopez v. Roxas, L-25716, 28 July 1966.
[8] *Ibid.*

"This provision **vests in the judicial branch of the government, not merely some specified or limited judicial power**, but **"the" judicial power under our political system, and, accordingly, the entirety or "all" of said power, except, only, so much as the Constitution confers upon some other agency**, such as the power to "judge all contests relating to the election, returns and qualifications" of members of the Senate and those of the House of Representatives, which is vested by the fundamental law solely in the Senate Electoral Tribunal and the House Electoral Tribunal, respectively.

Judicial power is the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights. The proper exercise of said authority requires legislative action: (1) defining such enforceable and demandable rights and/or prescribing remedies for violations thereof; and (2) determining the court with jurisdiction to hear and decide said controversies or disputes, in the first instance and/or on appeal. For this reason, the Constitution ordains that "Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts", subject to the limitations set forth in the fundamental law."[9]

Based on the foregoing, the lower courts' exercise of authority to settle justiciable controversies or disputes is dependent on legislative action, meaning the jurisdiction of the lower courts must first be defined by Congress through a law before it can exercise its judicial power. However, it is also undeniable that, once said right is granted, the lower courts' power to decide on cases is absolute, except if limited by the constitution or by law.

As in the case of the CTA, Congress enacted ***Republic Act ("RA") No. 1125, as amended by RA No. 9282 and RA No. 9503 (hereinafter referred to as "CTA Law")***,[10] which is the law defining the jurisdiction of the CTA over the following relevant instances, 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

[9] Emphasis supplied.
[10] An Act Creating the Court of Tax Appeals, as amended, 5 July 2008.

> provides a specific period of action, in which case the inaction shall be deemed a denial; xxx"

To reiterate, the original Petition for Review involves an issue questioning the correctness of the assessment issued by the authorized representative of the Commissioner of Internal Revenue. The ***CTA Law*** does not provide for an exception or limit as to the jurisdiction of the CTA over disputed assessments. Hence, the case clearly falls under ***Section 7(a)(1) of the CTA Law***.

Aside from the ***CTA Law, Section 4 of the National Internal Revenue Code of 1997, as amended*** is also clear that disputed assessments fall under the jurisdiction of the CTA, to wit:

> "SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> **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**."

Notwithstanding the doctrine in the ***Orion Case***, ***PD No. 242*** cannot divest CTA of its judicial power to exercise jurisdiction over the present controversy. From the way the relevant provisions in ***PD No. 242*** are worded, it serves as a general rule that all disputes, claims, and controversies between National Government Entities shall be settled by either the Solicitor General, the Government Corporate Counsel or the Secretary of Justice. ***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.

It is worthy to emphasize that jurisdiction over tax cases between National Government Entities 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."[11] Further emphasizing this need to reconcile contradictory laws is ***Section 17 of the CTA Law***, which states, to wit:

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[11] Ruben E. Agpalo, Statutory Construction, Fifth Edition 2003, p.272, citing City of Naga v. Agna, G.R. No. L-36049, 31 May 1976, and Eraña v. Vergel de Dios, G.R. No. L-3393, 23 November 1949.

> **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, ***CTA Law*** must prevail.

It is instructive that in ***PNOC v. CA, et. al. (hereinafter referred to as "PNOC Case")***,[12] the Supreme Court considered ***PD No. 242*** as a general law and the ***CTA Law*** 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:
>
> > Specific legislation upon a particular subject is not affected by a general law upon the same subject 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

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

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."[13]

Therefore, to insist that the original Petition for Review falls under the jurisdiction of the Solicitor General, the Government Corporate Counsel, or the Secretary of Justice is an anathema to Article VIII, Section 1 of the 1987 Constitution, established laws and jurisprudence. Indeed, upholding the assailed Decision and Resolution effectively deprives the CTA of its judicial power to decide on disputes clearly falling under its jurisdiction.

Likewise, it is worthy to stress that the CTA is in the best position to handle tax cases effectively and efficiently due to its expertise on the subject. This is evident in the Abstract of ***House Bill No. 6673*** where it is shown that the ***CTA Law*** (specifically 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, to wit:

> **"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 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 tbe tax collection efficiency of the Bureau of Internal Revenue, the Bureau of Customs and other revenue collecting agencies of the government."**[14]

This expertise of the CTA in tax matters was stressed in ***Macario Lim Gaw, Jr. v. CIR***,[15] where it was stated that the "CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated

[13] Emphasis supplied.
[14] Emphasis supplied.
[15] G.R. No. 222837, 23 July 2018.

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."

Finally, it is worthy to point 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***,[16] abided by the jurisprudence set by the ***PNOC Case***, stating that, under no uncertain terms, that the Secretary of Justice has no jurisdiction to review disputed assessments despite PD No. 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.[17]

Most recently, in a July 2019 case involving PSALM itself entitled ***PSALM v. Commissioner of Internal Revenue,***[18] 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 Case***, the Supreme Court acknowledges the CTA's exercise of jurisdiction over tax cases between the National Government and/or GOCCs.

All told, to rule that the CTA has no jurisdiction over tax cases between and among the National Government Entities 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

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[16] G.R. No. 177387, 9 November 2016.
[17] PAGCOR v. CIR, G.R. Nos. 210689, 210704 and 210725, 22 November 2017.
[18] G.R. No. 226556, 3 July 2019.

neither binds nor bars any one, and under which all acts performed and all claims flowing out are void.[19]

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[19] Sebastian v. Spouses Cruz, et al., G.R. No. 220940, 20 March 2017.