REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION,
Respondent.

CTA EB NO. 1516
(CTA Case No. 8346)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
JAN 05 2018 11:31 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves Petitioner's "Motion for Reconsideration" filed on September 20, 2017 *via* registered mail[1] seeking to set aside the Decision[2] promulgated on August 23, 2017 (Assailed Decision).

On October 18, 2017, this Court issued a Resolution[3] ordering Respondent to comment on the MR within ten (10) days from notice. In response thereto, Respondent filed its "Comment/Opposition (to the CIR's Motion for Reconsideration)" on November 16, 2017 *via* registered mail.[4]

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1 Rollo, pp. 94-103.
2 *Id.* at pp. 74-86.
3 *Id.* at pp. 105-106.
4 *Id.* at pp. 107-114.

The dispositive portion of the Assailed Decision reads as follows:

> **WHEREFORE**, finding no cogent reason to disturb the findings and conclusions reached by the Second Division in the assailed Decision dated April 05, 2016 as well as in the assailed Resolution dated August 12, 2016, the same are hereby **AFFIRMED**. Accordingly, the Petition for Review filed with the Court *En Banc* on September 23, 2016 is hereby [**DENIED**] for lack of merit.[5]

After a careful consideration and evaluation of the parties' respective arguments, the Court finds that the arguments raised in Petitioner's Motion for Reconsideration are mere rehash of Petitioner's arguments in his Petition for Review, and have already been amply discussed, passed upon and considered by this Court in the Assailed Decision sought to be reconsidered. Petitioner's arguments constitute neither compelling nor cogent reason to modify, much less reverse the Assailed Decision.

WHEREFORE, premises considered, Petitioner's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

[5] *Id.* at p. 85.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1516** *(CTA Case No. 8346)*
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION, *Respondent.*	Promulgated: JAN 05 2018 11:31 a.m.

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SEPARATE CONCURRING OPINION

DEL ROSARIO, PJ:

While in my Dissenting Opinion dated August 23, 2017, I voted to grant the Petition for Review filed by the Commissioner of Internal Revenue and opined that the case should be remanded to the Court in Division for further proceedings, I am constrained to re-visit said position in view of the recent pronouncement of the Supreme Court *En Banc* in ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue***[1].

I note that the present controversy involves a dispute ***solely*** between two government entities. In ***Asalus***,[2] the Supreme Court *En Banc* categorically ruled that disputes (including tax disputes) involving ***solely*** between government agencies and offices, including

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

government-owned or controlled corporation, shall be administratively settled or adjudicated following the procedure laid down in Presidential Decree No. 242 (PD 242), *viz.*:

> "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.** 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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> xxx xxx xxx
>
> The use of the word "shall" in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word "shall" means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims ***"solely"*** between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.
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> The law is clear and covers **"*all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements."** When the law says "all disputes, claims and controversies solely" among government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.
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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 lessen the clogged dockets of the courts**. 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**

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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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The first paragraph of Section 4 of the 1997 NIRC provides that the power of the CIR to interpret the NIRC provisions and other tax laws is **subject to review by the Secretary of Finance, who is the alter ego of the President**. Thus, the constitutional power of control of the President over all the executive departments, bureaus, and offices is still preserved. The President's power of control, which cannot be limited or withdrawn by Congress, means the power of the President to alter, modify, nullify, or set aside the judgment or action of a subordinate in the performance of his duties.

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 in relation 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**.

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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."

On the basis of the foregoing, it appears that this Court is bereft of jurisdiction to take cognizance of the present case as it involves a dispute solely between a government corporation and another government agency.

Lack of jurisdiction over the subject matter or nature of the action is matter of substantive law as statutory law defines the jurisdiction of the courts over the subject matter or nature of the action. It is settled that a judgment or final order issued by the court without jurisdiction over the subject matter or nature of the action is always void. The teachings in ***Hatib Abbain vs. Tongham Chua, et al.***[3] are instructive, *viz.*:

> "Xxx xxx xxx. In varying language, this Court has expressed its reprobation for judgments rendered by a court without jurisdiction. **Such a judgment is held to be 'a dead limb on the judicial tree, which should be lopped off or wholly disregarded as the circumstances require.'** In the language of Mr. Justice Street: **'Where a judgment or judicial order is void in this sense it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head.'** And in *Gomez vs. Concepcion*, this Court quoted with approval the following from *Freeman on Judgments*: **'A void judgment is in legal effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. The purchaser at a sale by virtue of its authority finds himself without title and without redress**.'" *(Citations omitted; boldfacing supplied)*

All told, **for lack of jurisdiction**, I **VOTE** to: (i) **DISMISS** the Petition for Review and the Motion for Reconsideration filed by the Commissioner of Internal Revenue; and, (ii) **SET ASIDE** the Decision dated August 23, 2017 of the Court *En Banc*, and the Decision dated

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[3] G.R. No. L-24241, February 26, 1968.

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April 5, 2016 and Resolution dated August 12, 2016 of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice