REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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PHILIPPINE AMUSEMENT AND GAMING CORPORATION, Petitioner,	**CTA Case No. 10292**
- versus -	***Members:***
THE BUREAU OF INTERNAL REVENUE, THE HON. COMMISSIONER OF INTERNAL REVENUE AND THE ASSISTANT COMMISIONER FOR LARGE TAXPAYERS SERVICE, in their official capacities as officers of the Bureau of Internal Revenue, Respondents.	**UY,** *Chairperson,* **BACORRO-VILLENA,** and **CUI-DAVID,**<u>*JJ.*</u> *Promulgated:* MAR 3 0 2023 9:05 a.m.

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RESOLUTION

For resolution is petitioner's ***Motion to Suspend Tax Collection*** filed on June 22, 2022, with ***Comment and Opposition (Re: Petitioner's Motion to Suspend Tax Collection)*** filed by respondents on July 18, 2022, seeking for the suspension of the implementation/execution of the Warrant of Distraint and/or Levy (WDL) and the Warrant of Garnishment (WOG), and collection of taxes until the final adjudication of the instant case, and declaring petitioner exempt from filing a bond or depositing the amount being claimed by respondents.

<u>Petitioner's Motion to Suspend Tax Collection</u>

In support of its *Motion to Suspend Collection*, petitioner argues that the Final Decision on Disputed Assessment (FDDA) subject of the WDL is not yet final executory and demandable in view of the timely filing of a Petition for Review on June 30, 2020.

Petitioner further invokes Revenue Memorandum Order No. 35-2019 issued on July 8, 2019 which states that:

> "In order to protect the interest of the government, civil remedies provided under Section 205 of the National Internal Revenue Code (NIRC), as amended, shall immediately be pursued as soon as the "Form 40-Collectible" reports relative to the following have been received by the offices responsible in the enforcement of collection remedies:
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> > 1. List of Unpaid Revenues (Annex "A") – these are self-assessed taxes arising from dishonored check, unpaid second installment of income tax due of individual taxpayers and duly validated unpaid tar due per tax returns; and
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> > 2. List of Unpaid Tax Assessments (Annex "8") – these are tax assessments arising from investigation which have become "final and executory" in accordance with existing policies."

Allegedly, the Bureau of Internal Revenue (BIR) has recognized that petitioner's alleged tax liability, which is the subject of the WDL, is not yet final, executory and demandable as per the Tax Clearance Certificate dated September 9, 2021 certifying that the tax deficiency subject of the case is still ongoing trial.

Anent the prejudice on the part of the government, petitioner submits that petitioner is a part of the general structure of the government, being a government entity performing all-important functions. As such, petitioner substantially contributes to the government coffers by paying franchise tax, withholding tax, fringe benefits, corporate income tax as well as mandatory contributions in order to support government grants issued to implement state policies and to generate revenues to fund government projects. Hence, it is a classic case where the government is taxing itself and/or collecting from itself.

Petitioner further avers that petitioner's funds partake the nature of public funds, the collection of the subject tax liability should be pursued before the Commission on Audit (COA) as the manner for enforcement or satisfaction of money claims in accordance with the rules and procedure laid down in Presidential Decree (P.D.) No. 1445 and other relevant laws.

Lastly, petitioner asserts that it is exempt from the bond requirement.

Respondents' Comment and Opposition (Re: Petitioner's Motion to Suspend Tax Collection)

Respondents in their Comment/Opposition submit that the assessments issued against petitioner is considered a delinquent account and was therefore a proper subject of the enforcement of collection proceedings.

Respondents counter that petitioner is mistaken in claiming that its deficiency taxes cannot be considered delinquent because it filed an appeal before this Court. Allegedly, the filing of a Petition for Review before the Court does not preclude the tax assessment from attaining a delinquent status.

According to respondents, Revenue Memorandum Order (RMO) No. 28-2012, which prescribes the use of the updated and consolidated collection manual, only requires that the concerned office receives the Form 40-Collectible relative to the List of Unpaid Revenues or List of Unpaid Tax Assessments before the institution of civil remedies under Section 205 of the National Internal Revenue Code (NIRC) of 1997, as amended; that there is no need to send a Preliminary Collection Letter and Final Notice Before Seizure to the taxpayer before the institution of the collection proceedings. Thus, the BIR need not wait for the resolution of the proceedings.

Respondents further contend that petitioner is mistaken in claiming that by virtue of a Tax Clearance Certificate, it has no pending tax delinquencies. According to respondents, the only thing guaranteed by the said certificate is that petitioner has no pending criminal case/s. That even if the certificate states that there is still an ongoing trial before this Court, the BIR considers the said assessments as delinquent accounts.

With respect to petitioner's prayer for the suspension of collection, respondents argue that petitioner has no clear legal right which ought to be protected through the issuance of a suspension order. First, petitioner failed to show the existence of its clear and unmistakable right to an exemption, and consequently to an injunction relief upon the collection of its tax liability. While petitioner avers that it will suffer irreparable damage, such will not prosper as its motion is grounded on the possibility of irreparable damage without proof of an actual existing right. Second, petitioner failed to establish that there is an urgent and permanent necessity for the issuance of the writ as petitioner merely provided self-service allegations without actual proof of the same.

Respondents also submit that petitioner is not exempt from distraint, levy or garnishment because petitioner is a government owned and controlled company (GOCC), and not a governmental entity.

Citing the case of *National Housing Authority vs. Heirs of Isidro Guivelondo*,[1] respondents state that the Supreme Court held that funds belonging to a government-owned or controlled corporations are not exempt from garnishment. As such, petitioner as a GOCC is a proper subject of collection proceedings by the government.

Respondents also claim that the collection of petitioner's tax liability will not jeopardize petitioner's interest. Petitioner failed to show the existence of an extreme urgency necessitating the issuance of the suspension order to prevent serious damage to it. Allegedly, there is no urgent and paramount necessity for a suspension order to issue for the purpose of preventing any grave and irreparable damage upon the petitioner. There is no real jeopardy upon petitioner's interest, at least not so great as would warrant the issuance of a suspension order. Petitioner did not even allege any grave or irreparable injury that the collection of the tax would inflict.

Respondents add that it is respondent who stands to suffer great damage and injury should a suspension order issues, as he stands to lose, albeit temporarily, his authority to impose upon and collect taxes due from petitioner.

Finally, respondents submit that in the event that an injunction is issued, to dispense with the payment of a bond will unduly jeopardize the interest of the government.

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[1] GR No. 154411, June 19, 2003.

According to respondents, the posting of a bond in this case is proper and in accordance with existing law. There can only be non-posting of the required bond when the collection was declared illegal. On the contrary, the collection of taxes is legal in all respect. Hence, the posting of a bond cannot be ordered or waived to the prejudice of the interest of the Government and the state.

THE COURT'S RULING

After careful evaluation of the allegations in the present Petition and Motion, this Court finds that the same should be dismissed for lack of jurisdiction.

At the outset, it must be remembered that jurisdiction is the power of a court, tribunal, or officer to hear, try, and decide a case.[2] Emanating from the sovereign authority that organizes courts,[3] jurisdiction over the subject matter is conferred by law.

As a general rule, jurisdiction of a court may be questioned at any stage of the proceedings.[4] The Court can, by its own, rule on the question of jurisdiction although not raised by the parties. As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[5]

Lack of jurisdiction is one those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on records that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss. So that, whenever it appears that the court has no jurisdiction over the subject matter; the action shall be dismissed.[6]

Notably, the instant case is between two government entities, specifically Philippine Amusement and Gaming Corporation (PAGCOR), as petitioner, and the BIR, the Commissioner of Internal

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[2] *Victoria Manufacturing Corporation Employees Union vs. Victoria Manufacturing Corporation*, G.R. No. 234446, July 24, 2019, citing *Anama v. Citibank, N.A. (formerly First National City Bank)*, G.R. No. 192048, December 13, 2017.
[3] *Id.*, citing *El Banco Español-Filipino v. Palanca*, 37 Phil. 921 (1918).
[4] *Heirs of Jose Fernando v. Reynaldo De Belen*, G.R. No. 186366, July 3, 2013.
[5] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.
[6] *Heirs of Jose Fernando v. Reynaldo De Belen*, G.R. No. 186366, July 3, 2013.

Revenue and the Assistant Commissioner for Large Taxpayers, as respondents.

We refer to 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, which lays down the guidelines in settling disputes, claims and controversies between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned controlled corporations (GOCCs), to wit:

> "SEC. 66. ***How Settled***. — **<u>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</u>**. 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.*** — **<u>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</u>**. 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.*** — **<u>Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:</u>**
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> (1) **<u>The Solicitor General</u>**, 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)*

From 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 case of ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue (PSALM case),***[7] the Supreme Court *En Banc* explained the foregoing provisions, as well as its predecessor, P.D. No. 242, which were substantially the same, 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.
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> We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists.
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> However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants**. There is no question that original jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the

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

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:

> (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
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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

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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> PD 242 is only applicable to disputes, claims, and controversies <u>**solely**</u> 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. <u>**In other words, PD 242 will *only* apply when *all* the parties involved are purely government offices and government-owned or controlled corporations**</u>. Since this case is a dispute between PSALM and NPC, both government-owned and controlled corporation, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case x x x
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> xxx xxx 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 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.
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> <u>**To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted:**</u> <u>(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</u>

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 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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PD 242 is now embodied in Chapter 14, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987, which took effect on 24 November 1989. . ."

The foregoing pronouncement in the *PSALM* case establishes 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.

Furthermore from the *PSALM* case, 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, summarized below:

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.

Relevant thereto, in the recent case of *Department of Energy vs. Court of Tax Appeals*, (*DOE* case)[8] the Supreme Court emphasized that the *PSALM* case remains the prevailing doctrine and thus, all disputes, claims, controversies, solely between or among executive agencies, including disputes on tax assessments, must course through administrative settlement with the SOJ or the Solicitor General, as the case may be, to wit:

> "**The Court holds that all disputes, claims, controversies, solely between or among executive agencies, including disputes on tax assessments, must perforce be submitted to administrative settlement by the Secretary of Justice or the Solicitor General, as the case may be.**
>
> **The CTA correctly steered clear of the case as it lacked jurisdiction over this dispute between the DOE and the BIR.**
>
> It also correctly gave credence to the provisions of P.D. No. 242, now embodied in the Revised Administrative Code, which especially deals with the resolution of disputes, claims and controversies between departments, bureaus, offices, agencies, and instrumentalities of the government, and carves out such disputes from the jurisdiction of the CTA, as provided in the NIRC and R.A. No. 1125.

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[8] G.R. No. 260912, August 17, 2022.

<u>This case falls squarely within the purview of *PSALM v. CIR*,</u> and the assailed Resolution of the CTA is consistent with our pronouncement therein. As will be hereafter discussed, the ratiocinations and conclusions of this Court, reflected therein, to this day remain valid and indisputable. Hence, **PSALM remains a good law and need not be revisited by this Court**." (*Emphases and underscoring added*)

In this case, the instant *Petition* and *motion* involve a dispute on tax assessments and the parties involved are **<u>public entities</u>** as the dispute is between petitioner PAGCOR, considered as a GOCC exercising dual governmental and proprietary function,[9] and respondents BIR, CIR and Assistant Commissioner of Large Taxpayers, all of which are government entities under the Executive Branch of the government.

Following the pronouncements in the *PSALM* and *DOE* cases, the instant case should be governed by PD 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. Accordingly, jurisdiction over the case vests with the SOJ, and not with this Court.

Well-settled that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[10] Corollary thereto, the Court could not likewise act on petitioner's Motion to Suspend Tax Collection.

WHEREFORE, in light of the foregoing, petitioner's *Motion to Suspend Tax Collection* and the *Petition for Review* are hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[9] Refer to the case of *Rene Figueroa vs. Commission on Audit*, G.R. Nos. 213212, 213497 & 213655, April 27, 2021.
[10] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice