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

*Third Division*

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| **CALUMPIT WATER DISTRICT,** *Petitioner,* | **CTA CASE NO. 10203** |
| | Members: |
| *-versus-* | **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: MAR 17 2022 3:50 p.m. |

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# DECISION

*MODESTO-SAN PEDRO, J.:*

## The Case

This is a Petition for Review,[1] filed by petitioner Calumpit Water District ("CAWADI") on 28 October 2019, pursuant to ***Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***.[2] It prays for the Court to order respondent to refund the amount of ₱1,836,168.59, representing franchise tax erroneously or illegally collected from petitioner.

## The Parties

Petitioner CAWADI is a government entity organized and existing by virtue of Presidential Decree ("PD") No. 198, as amended, or the "Provincial Water Utilities Act of 1973". It currently holds office at Calumpit, Bulacan.

Respondent Commissioner of Internal Revenue ("CIR") is the Commissioner of the Bureau of Internal Revenue ("BIR"), the government agency tasked to, among others, collect all national internal revenue taxes. He also has the power to decide on disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code, as amended

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1 Petition for Review; Division Docket, pp. 6-99 with annexes.
2 A.M. No. 05-11-07-CTA, 10 February 2009.

("Tax Code") or other laws or portion thereof administered by the BIR. He holds office at the BIR National Office, Diliman, Quezon City.

## The Facts

On 16 November 2016, petitioner filed a Petition for Review with the Court of Tax Appeals ("CTA"), raffled off to the Second Division (hereinafter referred to as "Original Petition"), seeking for the reversal and setting aside of respondent's Decision dated 21 June 2016. The Decision affirmed the Formal Letter of Demand ("FLD") assessing petitioner for deficiency franchise tax, interests, and compromise penalty in the aggregate amount of ₱1,856,168.59 for taxable year 2003. The case was docketed as CTA Case No. 9493.[3]

On 14 August 2017, the CTA Second Division rendered a Decision (hereinafter referred to as "Second Division Decision") partially granting petitioner's Petition for Review. It ordered the cancellation of the compromise penalty in the amount of ₱20,000.00. However, it affirmed the franchise tax assessment in the aggregate amount of ₱1,103,625.87 plus interest.[4]

Aggrieved, petitioner filed its Motion for Reconsideration (Of the Honorable Court's 14 August 2017 Decision) on 31 August 2017.[5]

During the pendency of the Motion for Reconsideration, petitioner paid the assessed deficiency franchise tax in the total amount of ₱1,836,168.59 on 30 October 2017 (hereinafter referred to as "alleged erroneously paid tax").[6]

On 1 December 2017, the CTA Second Division issued the Amended Decision (hereinafter referred to as "Second Division Amended Decision"), granting petitioner's Motion for Reconsideration and cancelled the franchise tax assessment.[7] The dispositive portion of the said Second Division Amended Decision is hereby quoted, to wit:

> "**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration (Of the Honorable Court's 14 August 2017 Decision) is hereby **GRANTED**. Accordingly, the respondent is barred from collecting the deficiency franchise tax by reason of prescription.
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> **SO ORDERED.**"

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3 Decision dated 14 August 2017, pp. 1 and 4; Division Docket, pp. 48 and 51.
4 *Id.*, p.15; *id.*, p. 62.
5 Motion for Reconsideration (Of the Honorable Court's 14 August 2017 Decision); *id.*, pp. 64-76.
6 Certification; *id.*, p. 127.
7 Amended Decision dated 1 December 2017; *id.*, pp. 86-93.

Aggrieved, respondent filed his Manifestation and Motion on 11 January 2018. He asked the Court to dismiss the Original Petition for being moot and academic due to the approval made by the Regional Evaluation Board ("REB") of petitioner's compromise offer of settlement.[8]

The CTA Second Division issued a Resolution on 31 January 2018 denying respondent's Manifestation and Motion. The Court ruled that respondent failed to adduce evidence as to the alleged payment made by petitioner. It also found that the Manifestation and Motion was already filed out of time.[9]

Subsequently, the Amended Decision became final and executory upon the CTA Second Division's issuance of the Entry of Judgment on 24 February 2018.[10]

On various dates, thereafter, petitioner filed several administrative letter requests claiming refund of the alleged erroneously paid tax,[11] to wit:

| **Date Filed** | **Recipient** |
|---|---|
| 1 March 2018 | CIR |
| 22 August 2018 | Mr. Manuel V. Mapoy. Regional Director of BIR Revenue Region No. 5 |
| 10 January 2019 | CIR |

On 31 January 2019, Regional Director Mapoy issued a Reply Letter denying petitioner's refund claim.[12]

The Reply Letter reads in part "[i]n view of the foregoing, your request for refund of Php1,836,168.59 pertaining to the previous payment of the 2003 Franchise Taxes and Compromise Penalty by CAWADI is hereby DENIED. This is the final decision of this Office on the matter. However, you are not precluded from exercising your right to appeal before the Office of the Commissioner."[13]

This prompted petitioner to file a Letter of Appeal to the CIR on 7 May 2019.[14]

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8 Resolution dated 31 January 2018; *id.*, pp. 95-97.
9 *Ibid.*
10 Entry of Judgment dated 24 February 2018; *id.*, p. 98.
11 Claim for Refund; *id.*, pp. 17-20.
12 Denial Letter dated 31 January 2019; *id.*, pp. 21-22.
13 *Ibid.*
14 Appeal Letter dated 16 April 2019; *id.*, pp. 23-29.

Since no action had been undertaken by respondent on its Appeal, petitioner filed the instant Petition for Review on 28 October 2019.[15]

Respondent filed his Answer on 29 January 2020.[16]

Afterwards, the parties submitted to Court their Pre-Trial Briefs on 21 January 2021 for petitioner[17] and 4 September 2020 for respondent.[18]

The Pre-Trial Conference took place on 2 February 2021. During the said proceedings, only petitioner's counsel was present. Hence, the Court directed respondent's counsel to file an explanation for his absence despite notice.[19]

In the same proceedings, petitioner manifested that it would no longer present evidence considering that the case involves only a legal issue. Hence, the Court ordered the parties to file their respective Memoranda.[20]

Respondent filed his Memorandum with his counsel's Explanation on 24 February 2021.[21]

Respondent's counsel clarified that the Notice setting the case for Pre-Trial Conference was received by a staff of the Legal Division of the BIR. However, the same was not forwarded to him and could have been misplaced in their Office due to the implementation of the skeletal workforce during the onslaught of the COVID-19 pandemic. He explained that during the scheduled Pre-Trial Conference, he was attending another hearing in the CTA. Respondent's then counsel pleaded the Court to admit his explanation and not to impose sanctions against him.[22]

Subsequently, petitioner filed its Memorandum on 3 March 2021.[23]

Thus, the Court submitted the case for decision on 18 March 2021.[24] Hence, this Decision.

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[15] Petition for Review; *id.*, pp. 6-99 with annexes.
[16] Answer; *id.*, pp. 132-136.
[17] Pre-Trial Brief for Petitioner; *id.*, pp. 159-167.
[18] Pre-Trial Brief for the Respondent; *id.*, pp. 149-152.
[19] Minutes of the Hearing dated 2 February 2021; *id.*, p. 179; Order; dated 2 February 2021 *id.*, pp. 180-181.
[20] *Ibid.*
[21] Respondent's Memorandum; *id.*, pp. 182-188.
[22] *Ibid.*
[23] Petitioner's Memorandum; *id.*, pp. 189-198.
[24] Resolution dated 18 March 2021; *id.*, p. 198.

## The Issue[25]

WHETHER THE SECOND DIVISION AMENDED DECISION DECLARING THE CIR BARRED FROM COLLECTING THE DEFICIENCY FRANCHISE TAX FROM PETITIONER, RENDERED ITS TAX PAYMENT ERRONEOUSLY, ILLEGALLY OR WRONGFULLY COLLECTED.

## Arguments of the Parties

### Petitioner's Arguments[26]

In light of the Second Division Amended Decision barring respondent from collecting the assessed deficiency franchise tax by reason of prescription, petitioner asserts that the payment it made in the amount of ₱1,836,168.59 was erroneously and illegally collected. As such, it argues that it is entitled to refund pursuant to ***Section 229 of the Tax Code*** and under the principle of *solutio indebiti* under ***Articles 2154 to 2156 of the Civil Code.***

### Respondent's Counter-Arguments[27]

Respondent argues that the franchise tax payment was not erroneously or illegally collected. He explains that it was petitioner who pushed to voluntarily settle the assessment. Considering that he too wanted to put an end to litigation, he approved, through the REB, petitioner's compromise settlement pursuant to ***Section 204 of the Tax Code.***

He states that the compromise settlement, which was completed before the promulgation of the Second Division Amended Decision, rendered the assessment fully settled and the Original Petition moot and academic.

He argues that petitioner is already estopped from questioning the validity of the payment since it settled the taxes voluntarily despite its position that the BIR's right to collect the franchise tax had already prescribed.

At any rate, he states that petitioner's payment of the franchise tax is its moral and legal obligation to the government. He raises that the Court, in the Second Division Decision had already acknowledged that petitioner is liable for the assessed franchise tax but was only exonerated from liability on the ground of prescription.

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25 *See* Ground Relied Upon in the Petition, p. 4; *id.*, p. 9.
26 Petitioner's Memorandum; *id.*, pp. 189-198.
27 Respondent's Memorandum; *id.*, pp. 182-188.

## The Ruling of the Court

After a careful review of the arguments made by both parties, the Court deems it proper to grant the Petition.

**The Court has jurisdiction over the present Petition.**

Before delving on the issue raised by petitioner, the Court will first resolve whether it has jurisdiction to take cognizance of the present case.

***Sections 2 and 3 of Presidential Decree ("PD") No. 242***[28] provide that disputes between departments, bureaus, offices, agencies, and instrumentalities of the National Government, specifically, involving questions of law shall be settled or adjudicated by the Secretary of Justice.

The aforementioned provisions of ***PD No. 242***, enacted on 9 July 1973, were replicated under ***Sections 67 and 68, Chapter 14, Book IV of the Administrative Code of 1987.***[29] Later on, these provisions were interpreted by the Supreme Court in ***Power Sector Assets and Liabilities Management Corporation ("PSALM") v. Commissioner of Internal Revenue (hereinafter referred to as "PSALM Case")***,[30] to wit:

> "xxx Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled· corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.
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> xxx xxx xxx
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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.
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> xxx xxx xxx
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> 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. Section 17, Article VII of the Constitution states unequivocally that: 'The President shall have control of all the executive departments, bureaus and offices.'"

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[28] 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.

[29] Executive Order No. 292; 25 July 1987.

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

Based on the foregoing reasons, the Supreme Court ruled that the DOJ and not the CTA had jurisdiction over the issue involved in the ***PSALM Case***.

In order to determine whether the ***PSALM Case*** is applicable herein, the Court refers to the ruling of the Supreme Court in ***University of the East v. Veronica M. Masangkay***,[31] to wit:

> "Applying said principle, the CA held that Our ruling in *University of the East v. Adelia Rocamora* is a precedent to the case at bar, involving, as it does, herein respondents' co-author and tackling the same violation-the alleged plagiarism of the very same materials subject of the instant case.
>
> In this petition, UE, however, asserts that the case of respondents substantially varies from Rocamora so as not to warrant the application of said rule.
>
> Indeed, the CA erred when it relied on Our ruling in *University of the East v. Adelia Rocamora* in resolving the present dispute. Our decision in *Rocamora,* rendered via a Minute Resolution, is not a precedent to the case at bar even though it tackles the same violation-the alleged plagiarism of the very same materials subject of the instant case, which was initiated by respondents' co-author. This is so since respondents are simply not similarly situated with Rocamora so as to warrant the application of the doctrine of *stare decisis.*
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> **A legal precedent is a principle or rule established in a previous case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts.**
>
> Here, **We find that the Rocamora case <u>is not on all fours with the present dispute, thereby removing it from the application of the principle of *stare decisis*.</u>** *First,* herein respondents categorically represented to UE under oath that the Manuals were free from plagiarism-an act in which their co-author Rocamora did not participate. *Second,* respondents benefited financially from the sale of the Manuals while Rocamora did not. *Third,* respondents acquiesced to UE's decision to terminate their services and even requested the release of and thereafter claimed the benefits due them."
> (Emphasis and underscoring supplied.)

Taking cue from the above-quoted case, in order for the ruling in the ***PSALM Case*** to be applicable to the present controversy, there must be a **similarity in the facts and issues involved in both cases**. A close scrutiny of the facts herein and of the ***PSALM Case***, however, proves that they are outright different from one another.

A distinct element in the issue discussed in the ***PSALM Case*** is the presence of a Memorandum of Agreement ("MOA") executed among PSALM, BIR, and the National Power Corporation ("NPC") with respect to the payment of alleged deficiency Value-Added Taxes ("VAT") arising from the sale of NPC of two power plants. Following the MOA, NPC and PSALM

[31] G.R. No. 226727, 25 April 2018.

would pay under protest to the BIR basic VAT amounting to ₱3,813,080,472.00. NPC, PSALM, and the BIR further undertook in the MOA that they would seek resolution of the issue on the deficiency VAT before the appropriate court or body and that the ruling of such court or body would be immediately executory without need of notice or demand from the NPC or PSALM. Finally, a DOJ ruling that was favorable to NPC and PSALM would be tantamount to filing of an application for refund.

PSALM then paid the deficiency VAT pursuant to the MOA. 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 then appealed to the Supreme Court, which decreed that the DOJ indeed has jurisdiction.

These circumstances are not present in this case.

In the case at bar, the facts involved are as follows: a) respondent assessed petitioner for deficiency franchise tax, interest, surcharge, and compromise penalty in the aggregate amount of ₱1,856,168.59; b) petitioner protested the assessment with respondent and eventually with the CTA; c) the CTA promulgated the Second Division Decision ordering petitioner to pay the assessment and rendering null and void the imposition of the compromise penalty; d) aggrieved, petitioner filed its Motion for Reconsideration; e) in the interim, petitioner paid respondent the franchise tax assessment in the amount of ₱1,836,168.59; f) the CTA rendered the Second Division Amended Decision barring respondent from collecting the assessment by reason of prescription; and g) petitioner then filed a claim for refund before the BIR and the CTA.

Clearly, there is a difference in the factual circumstances between the ***PSALM Case*** and the present controversy. In the ***PSALM Case***, there was no decision or inaction (on a disputed assessment, refund of internal revenue taxes, or other matters involving the application of the provision of the ***Tax Code)*** to speak of as the actions of the parties were governed by the MOA. Hence, PSALM could not have sought recourse with the CTA, even if it wanted to, as the CTA would have no jurisdiction over the same. It is noteworthy that should PSALM have proceeded in filing a case with the CTA, it would have been availing of an original action before the CTA for the purpose of interpreting the MOA, a matter that does not fall within the jurisdiction of the CTA.[32] Hence, with the execution of the MOA, the CIR and PSALM had voluntarily submitted to the jurisdiction, power, and authority of the DOJ.

This is not the situation involved in the instant case, where petitioner's cause of action is hinged upon a law, specifically ***Section 7(a)(2) of RA 1125, as amended by RA 9282 and RA 9503***, particularly on the application of the CTA's "refund" jurisdiction, a law not even considered and discussed with much weight in the ***PSALM Case***. Hence, absent any agreement between or among the parties on the voluntary submission of the tax issues to the DOJ, the default provision on CTA's exclusive appellate jurisdiction should prevail.

Moreover, not all controversies between or among national government entities fall under the coverage of ***PD 242***, as ruled by the Supreme Court in ***Orion Water District, et. al. v. The Government Service Insurance System ("Orion Case")***,[33] 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. To fully understand the scope of the law, reference must be made to Presidential Decree (P.D.) No. 242, the precursor of Chapter 14, Book IV of E.O. No. 292, from which the entirety of the provisions in question was lifted. Under P.D. No. 242, it was clearly articulated that it only applies to particular instances of disputes among government offices. Section 1 thereof states:**
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>> 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."**

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[32] Section 3, Rule 4, A.M. No. 05-11-07-CTA, 10 February 2009.

[33] G.R. No. 195382, 15 June 2016, *citing Philippine Veterans Investment Development Corporation (PHIVIDEC), et. al. v. Judge Velez*, G.R. No. 84295, 18 July 1991.

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.

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

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." (Emphasis and underscoring supplied.)

In the ***Orion Case,*** the Supreme Court ratiocinated that ***PD 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 present case is not within the scope of ***PD 242*** since it does not involve the interpretation of statute, contract, or agreement but an issue involving the validity of petitioner's tax refund claim.

It is also 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 ("PAGCOR")***,[34] abided by the jurisprudence set by the ***PNOC Case***, stating that, under no uncertain terms, that the DOJ has no jurisdiction to review disputed assessments despite ***PD 242,*** jurisdiction of which belongs exclusively to CTA.

Similarly, 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.[35]

In a July 2019 case involving PSALM itself, entitled ***PSALM v. Commissioner of Internal Revenue***,[36] the Supreme Court cancelled an assessment made by respondent without divesting the CTA of its jurisdiction. Clearly, to date, and despite the ruling in the previous ***PSALM Case***, the Supreme Court acknowledges the CTA's exercise of jurisdiction over tax cases between or among national government entities.

In a 2020 case entitled ***Commissioner of Internal Revenue v. Bases Conversion and Development Authority***,[37] the Supreme Court ruled on the issue of whether the Bases Conversion and Development Authority ("BCDA"), a government instrumentality, is exempt from Creditable Withholding Tax on the sale of its Global City properties without questioning the CTA's exercise of jurisdiction over the controversy.

Most recently, in ***Bases Conversion and Development Authority v. Commissioner of Internal Revenue***,[38] the Supreme Court even remanded the case, which involves the BCDA as one of its parties, back to the CTA for further proceedings.

Following these discussions, therefore, the Court in Division has undoubted jurisdiction to try the present controversy. To rule that the CTA has no jurisdiction over tax cases between and among the national government entities will not only create a dangerous precedent but will cause this Court to violate its sacred duty to resolve justiciable controversies as mandated under ***Article VIII, Section I of the 1987 Constitution***.

This Court also notes that conferring jurisdiction to the present controversy runs consistent with the action taken by the CTA Second Division in CTA Case No. 9493, a case closely related to the current Petition.

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34 G.R. No. 177387, 9 November 2016.
35 *PAGCOR v. CIR*, G.R. Nos. 210689-90, 210704, and 210725, 22 November 2017.
36 G.R. No. 226556, 3 July 2019.
37 G.R. No. 217898, 15 January 2020.
38 G.R. No. 205466, 11 January 2021.

Considering that this Court has jurisdiction to entertain the present controversy, it will now resolve the propriety of petitioner's refund claim.

**Petitioner is entitled to the refund claimed.**

The authority of the CIR to refund or issue a tax credit in favor of a taxpayer and the mechanisms in place for its implementation is governed by ***Sections 204 and 229 of the Tax Code***, to wit:

> "SEC. 204. **Authority of the Commissioner** to Compromise, Abate and **Refund or Credit Taxes.** — The Commissioner may —
>
> xxx xxx xxx
>
> (C) **Credit or refund taxes erroneously or illegally received or penalties imposed without authority**, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "SEC. 229. Recovery of Tax Erroneously or Illegally Collected.- **no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected,** or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner;** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."
> (Emphasis and underscoring supplied.)

As can be gleaned from the above, the Tax Code allows the credit or refund of tax provided that the claimant is able to prove that it was erroneously or illegally collected by the BIR.

In ***Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.,***[39] the Supreme Court defined **erroneous or illegal tax** "as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal". The Tax Code even allows the refund or credit of taxes "initially collected legally, but later becomes refundable to the taxpayer by the happening of a supervening cause".[40]

However, the taxpayer's right to recover tax erroneously or illegally collected is not absolute. It must first prove compliance with the foregoing procedural requisites:

1. The taxpayer-claimant should have first filed an administrative claim with the CIR before filing a judicial claim with the Court; and

2. Both claims must have been filed within two (2) years from payment of the tax.[41]

In ***Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.,***[42] the High Court explained the rationale of requiring the filing of the administrative claim ahead of the judicial claim, as follows:

> **"The law only requires that an administrative claim be priorly filed. <u>That is, to give the BIR at the administrative level an opportunity to act on said claim. In other words, for as long as the administrative claim and the judicial claim were filed within the two-year prescriptive period, then there was exhaustion of the administrative remedies.</u>**" (Emphasis and underscoring supplied.)

Meanwhile, in ***Commissioner of Internal Revenue v. San Miguel Corp., (hereinafter referred to as the "San Miguel Case"),***[43] the Supreme Court highlighted the importance of complying with the two (2) year reglementary period in filing both administrative and judicial claims, to wit:

> "The aforequoted provisions are clear: **within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the courts of law. <u>Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.</u>** It is worthy to stress that

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[39] G.R. No. 188497, 25 April 2012.

[40] Commissioner of Internal Revenue (CIR) v. Insular Lumber Co., G.R. No. L-24221, 11 December 1967; Commissioner of Internal Revenue v. Central Azucarera Don Pedro, G.R. No. L-28467, 28 February 1973.

[41] Commissioner of Internal Revenue v. San Miguel Corp., G.R. Nos. 180740 & 180910, 11 November 2019.

[42] G.R. No. 231581, 10 April 2019.

[43] *Ibid.*

> as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."""
> (Emphasis and underscoring supplied.)

Guided by the foregoing legal pronouncements and after a thorough review of the case records, the Court finds petitioner to have adequately proven its compliance with the requirements under ***Sections 204 and 229 of the Tax Code*** and, thus, to be entitled to the refund being claimed.

Here, petitioner was able to establish that the franchise tax it paid to respondent was erroneously and/or illegally collected. No less than the CTA Second Division had already ruled that the BIR's right to collect the assessed franchise tax had already prescribed considering its failure to enforce collection within five (5) years from the issuance of the FLD.

The relevant portion of the Second Division Amended Decision is quoted, to wit:

> "Applying the provision of the NIRC as well as the foregoing jurisprudence, **the subject final assessment notice, which has not yet prescribed during its issuance, was issued on February 26, 2008. Counting five (5) years from said date, respondent should have commenced its collection efforts, either judicially or administratively not later than February 26, 2013**.
>
> However, the facts of the case reveal that as of the time of petitioner's filing of its petition for review, the respondent has not issued any warrant of distraint or levy, nor serve any collection letter to petitioner.
>
> Further, the period for the running of the statute of limitation for the collection of said assessed deficiency was not suspended because of the absence of an approved request for reinvestigation from the BIR.
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> xxx xxx xxx
>
> The written protest filed by the petitioner, through the Office of the Government Corporate Counsel (OGCC), merely seeks for the setting aside and cancellation of the FLD dated February 26, 2008. Respondent should have issued a warrant of distraint or levy or preliminary collection letter not later than February 26, 2013. However, respondent failed to do so. Hence, respondent cannot issue any warrant of distraint or levy from February 27, 2013 onwards **because his right to collect the assessed deficiency franchise tax has already prescribed**.
>
> **As to the imposition of surcharge and interest, the issue becomes moot and academic**.
>
> WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Of the Honorable Court's 14 August 2017 Decision) is hereby GRANTED. **Accordingly, the respondent is barred from collecting the deficiency franchise tax by reason of prescription**.

SO ORDERED."
(Emphasis and underscoring supplied.)

The Second Division Amended Decision, which became final and executory on 24 February 2018,[44] clearly ruled that respondent's right to collect the assessed franchise tax lasted only until 26 February 2013, or within five (5) years after the BIR's issuance of the FLD on 26 February 2008.

Hence, when petitioner paid the franchise tax on 30 October 2017,[45] respondent **undoubtedly no longer had authority to collect the same**. Respondent's collection of the franchise tax therefore falls within the definition of erroneously or illegally collected taxes.

Then, too, the Court also finds petitioner to have proven its compliance with the procedural requirements under ***Sections 204 and 229 of the Tax Code***.

Case records disclose that petitioner was able to file several administrative claims to the BIR on 1 March 2018, 22 August 2018, and 10 January 2019.[46] After it received a denial letter from Regional Director Mapoy, petitioner elevated its appeal to the CIR on 7 May 2019.[47] Petitioner then filed the present petition on 28 October 2019,[48] considering respondent's failure to act on the refund claim. Succinctly, both administrative and judicial claims were filed within two (2) years from petitioner's payment of the franchise tax, or before 30 October 2019.

In sum, the Court finds petitioner to have satisfactorily complied with the requirements under the Tax Code in prosecuting its refund claim representing erroneously or illegally collected franchise tax.

**WHEREFORE,** premises considered, the Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱1,836,168.59, representing franchise tax erroneously or illegally collected.

Meanwhile, respondent's counsel's Manifestation is hereby **ADMITTED** and **DEEMED COMPLIANT** with the 2 February 2021 Order and 18 March 2021 Resolution of the Court.

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44 Entry of Judgment dated 24 February 2018; Division Docket., p. 98.
45 Certification; *id.*, p. 127.
46 Claim for Refund; *id.*, pp. 17-20.
47 Appeal Letter dated 16 April 2019; *id.*, pp. 23-29.
48 Petition for Review; *id.*, pp. 6-99 with annexes.

**SO ORDERED.**

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

**WE CONCUR:**

*(With due respect, please see Dissenting Opinion)*
**ERLINDA P. UY**
Associate Justice

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

## ATTESTATION

I attest 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's Division

**ERLINDA P. UY**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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**

***THIRD DIVISION***

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|---|---|
| **CALUMPIT WATER DISTRICT,** Petitioner, | **CTA Case No. 10203** |
| | ***Present:*** |
| **- versus -** | **UY,** Chairperson, **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** JJ. |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | ***Promulgated:*** MAR 17 2022 3:50 p.m. |

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# DISSENTING OPINION

**UY, J.:**

With all due respect, I dissent with the majority opinion in ruling that the Court has jurisdiction over the instant case.

I submit that it is the Secretary of Justice (SOJ) which has jurisdiction over the instant case pursuant to PD 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987). The pertinent provisions of which provide:

> "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.

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. (Emphasis ours)

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:

(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).**" (Emphasis supplied.)

On the basis of the foregoing, it is my view that the jurisdiction over the instant case vests with the SOJ and not with the CTA, as this case involves a dispute solely between government entities.

It bears emphasis that no less than the Supreme Court *En Banc* in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*[1] (hereinafter referred to as *"PSALM case"*), reconciled the provisions between **PD 242** and the **National Internal Revenue (NIRC) of 1997**, as amended, (in relation to R.A. No. 1125[2], as amended by R.A. No. 9282[3]) concerning the jurisdiction of the SOJ vis-a-vis that of the CTA in this wise:

"The second paragraph of Section 4 of the 1997 NIRC, providing for the exclusive appellate jurisdiction of

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

[2] *Act Creating the Court of Tax Appeals.*

[3] *An Act Expanding the Jurisdiction of the Court of Tax Appeals ("CTA"), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.*

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, **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.

**<u>To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted</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 with Section 4 of the NIRC; and (2) **<u>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. **On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities**...

xxx xxx xxx

**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. . . "(Emphasis supplied.)

In harmonizing PD 242 and NIRC of 1997, 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:

1. As regards private entities and the BIR, the decision of the CIR is 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, the case shall be governed by PD 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 SOJ, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

It is clear, therefore, that the Supreme Court *En Banc* in no uncertain terms reconciled and interpreted the conflicting provisions of PD 242 and NIRC of 1997 and declared categorically that **all controversies, including tax disputes,** solely between government agencies and offices, including GOCCs, fall within the jurisdiction of the SOJ pursuant to PD 242 and not with the CTA.

The foregoing interpretation was further affirmed in the case of *Commissioner of Internal Revenue vs. The Secretary of Justice and Metropolitan Cebu Water District (MCWD)*,[4] 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,

[4] G.R. No. 209289, July 9, 2018.

which is a GOCC pursuant to P.D. No. 198, also known as the Provincial Water Utilities Act of 1973.

Evidently, the Supreme Court recognizes the jurisdiction of the SOJ over tax disputes between government agencies and offices.

Applying the foregoing jurisprudential pronouncements, considering that the disputing parties in this case are both government entities - petitioner is a local water district, while respondent is a government bureau, the instant case should be governed by PD 242 and not by NIRC of 1997. Correspondingly, it is the SOJ which has jurisdiction over the instant case.

I humbly submit that the pronouncement in the consolidated case of *Philippine National Oil Company (PNOC) vs. The Hon. Court of Appeals (CA), et al* [5] (hereinafter referred to as *"PNOC case"*), is not applicable in the instant case given the stark difference in the factual milieu of both cases. Significantly, the Supreme Court *En Banc* in the *PSALM case* explained the rationale for not applying PD 242 to the PNOC case as follows:

> "This case is different from the case of *Philippine National Oil Company v. Court of Appeals*,[30] (*PNOC v. CA*) which involves not only the BIR (a government bureau) and the PNOC and PNB (both government owned or controlled corporations), but also respondent Tirso Savellano, **a private citizen**. **Clearly, PD 242 is not applicable to the case of *PNOC v. CA***
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> In contrast, 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.
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> xxx xxx xxx"
> (Emphasis and underscoring supplied)

Based on the foregoing, the reason why PD 242 was not applied to the PNOC case was due to the fact that a private entity was a party to the dispute therein. In contrast, the instant case does not involve

[5] G.R. No. 109976, April 26, 2005.

any private entity but is **solely** between government entities. As such, it is my view that the PNOC case finds no application in the instant case.

I am not unmindful of the 2019 case of *PSALM vs CIR*[6], where the Supreme Court reversed and set aside the decision of the CTA and cancelled the assessment against PSALM. A careful reading of the said case, however, reveals that the issue on jurisdiction over intra-government disputes was not raised by the parties nor passed upon by the Supreme Court. It must be emphasized that "any issue, whether raised or not by the parties, but **not** passed upon by the Court, does not have any value as precedent."[7] Accordingly, the said case cannot be relied upon as precedent in resolving the issue on jurisdiction in this case.

All told, I **VOTE** to **DISMISS** the instant *Petition for Review* for lack of jurisdiction.

**ERLINDA P. UY**
*Associate Justice*

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[6]G.R. No. 226556, July 3, 2019.
[7]*Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196113, *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 197156, February 12, 2013.

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Third Division*

**CALUMPIT WATER DISTRICT,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 10203**

Members:

**UY,** *Chairperson*
**RINGPIS-LIBAN,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
MAR 17 2022
3:57 p.m.

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# CONCURRING OPINION

***RINGPIS-LIBAN, J.:***

I concur with the ponencia of my esteemed colleague, Associate Justice Maria Rowena Modesto-San Pedro in granting the present Petition for Review and in ordering the refund of the amount of Php1,836,168.59 representing franchise taxes erroneously and/or illegally collected.

As regards the jurisdictional aspect of the present case, I just wish to reiterate my position that the doctrine laid down by the Supreme Court in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue ("PSALM")*[1] should only be applied in instances of similar factual milieu which is not the case here.

On this point, I adopt my discussion in *PNOC Development and Management Corporation v. Commissioner of Internal Revenue ("PNOC")*,[2] which expounded on why PSALM should not be applied in each and every case. The relevant portions of the said decision are quoted below:

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[1] G.R. No. 198146, August 8, 2017.
[2] CTA EB No. 1486 (CTA Case No. 8649), February 19, 2018.

"x x x In that case, the Supreme Court decreed that '[u]nder Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.'

The pertinent sections of PD 242 are as follows:

'Section 1. **Provisions of law to the contrary notwithstanding, *all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, *shall* henceforth be administratively settled or adjudicated as provided hereinafter:** Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree.

Section 2. **In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice**, as Attorney General and ex officio adviser of all government-owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. **His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.**

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

(a) The Solicitor General, with respect to disputes or claims [or] controversies between or among the departments, bureaus, offices and other agencies of the National Government;

(b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and

(c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b).' *(Emphasis supplied)*

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

The holding in the *PSALM* case was justified on the grounds that: a) the President's constitutional power of control over all the executive departments, bureaus and offices under Section 17, Article VII of the Constitution must be upheld; b) under the doctrine of exhaustion of administrative remedies, relief under PD 242 must be pursued first prior to seeking judicial recourse, otherwise, the action would be premature and the case not ripe for judicial determination; and c) in harmonizing Section 4 of the NIRC of 1997 which delineates the powers of the CIR with PD 242, the NIRC of 1997 is a general law while PD 242 is a special law and, hence, must prevail over the former.

The Supreme Court further discussed the rationale for vesting the Secretary of Justice with jurisdiction under PD 242, as follows:

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

> The law is clear and covers '***all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements.'** When the law says 'all disputes, claims and controversies solely' among government agencies, the law means ***all, without exception.*** Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.
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> PD 242 is only applicable to disputes, claims, and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations.' *(Boldface and emphasis in the original)*

While the *PSALM* case vests the Secretary of Justice with jurisdiction over disputed tax assessments, it also has the necessary and, perhaps, unintended consequence of divesting this Court, the CTA, of its exclusive appellate jurisdiction over matters involving taxation if the controversy or dispute involves two government entities.

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

That being said, the Court of Tax Appeals is a court of special or limited jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. 49 The jurisdiction of the CTA is conferred by Republic Act (RA) No. 1125, as amended by RA No. 9282. The pertinent provision is quoted hereunder for ready reference:

> 'SEC. 7. *Jurisdiction.* — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;'** *(Emphasis supplied)*

A study of both the *PSALM* case and the instant case shows that due to their respective distinctive factual milieu, each has taken a different procedural path.

The *PSALM* case involved a dispute between PSALM and NPC, both GOCCs, and the BIR, a National Government Office. The controversy arose when the BIR demanded payment of deficiency VAT from PSALM arising from the sale of two power plants. **While PSALM did pay the deficiency VAT pursuant to the Memorandum of Agreement that the parties involved signed**, PSALM also questioned whether or not the sale of the power plants were subject to VAT with the Department of Justice (DOJ). The DOJ ruled in favor of PSALM, declaring the deficiency VAT assessment null and void. The CIR questioned the jurisdiction of the DOJ via Petition for Certiorari with the Court of Appeals (CA). The CA then ruled that the DOJ committed grave abuse of discretion amounting to lack of jurisdiction in issuing the ruling. PSALM appealed to the Supreme Court which decreed that the DOJ indeed has jurisdiction, as discussed above.

The instant petition, on the other hand, involves PDMC, a GOCC, and the CIR, as head of the BIR, a government office. There was an assessment, first and foremost, which PDMC protested. However, as there was inaction on the part of the CIR, PDMC found recourse to this Court pursuant to the judicial remedy laid down for taxpayers in Section 7 (a) (2) of RA 1125, as amended by RA 9282.

In both cases, the taxpayers involved pursued remedies made available to them by law, given their factual circumstances. In the PSALM case, there was no decision or inaction to speak of as the actions of the parties were governed by the Memorandum of Agreement. Hence, PSALM could not have appealed to the CTA, even if it wanted to, as the CTA would have no jurisdiction over the same. That is not the situation involved in the instant case wherein PDMC sought legal redress granted to them by law, specifically Section 7 (a) (2) of RA 1125, as amended by RA 9282, a law not even remotely discussed in the *PSALM* case as focus therein was on Section 4 of the NIRC of 1997 which dealt with the powers of the Commissioner of Internal Revenue and **not** the exclusive appellate jurisdiction of the CTA.

Second, to apply the *PSALM* doctrine wholesale to all cases involving solely government entities before this Court would have adverse effects not only on the jurisdiction of the CTA, but also on the remedies available to the CIR. This has been discussed in the Dissenting Opinion of Justice Mariano C. Del Castillo in the *PSALM* case, thus:

> 'It must be pointed out that to allow the Secretary of Justice to have jurisdiction over the instant case would not only **deprive the CTA of its exclusive appellate jurisdiction but would also deprive respondent CIR of any judicial remedy.** The Majority Opinion recommends that 'since the amount involved in this case is more than one million pesos, respondent CIR may appeal the DOJ Secretary's Decision to the Office of the President in accordance with Section 70, Chapter 14, Book IV of EO 292 and Section 5 of PD 242.' **However, if the appeal to the Office of the President were denied, respondent CIR would have no judicial recourse. Respondent CIR would not be able to appeal the decision of the Office of the President to the Court of Appeals (CA) under Rule 43 of the Rules of Court because the CA has no jurisdiction to review tax cases. Neither can respondent CIR file a Petition with the CTA because the CTA has no jurisdiction over decisions of the Office of the President or the Secretary of Justice.'**

Third, the *PSALM* case discusses PD 242 vis-a-vis Section 4 of the NIRC of 1997 in order to decide upon the issue of whether or not the Secretary of Justice has jurisdiction in a case involving solely government entities. In its discussion, the Court came to the conclusion that the NIRC of 1997 is a general law dealing with matters involving taxation and PD 242, a special law, governing adjudication of controversies and disputes between government entities. Being a special law, its provisions are paramount to the provisions of the NIRC of 1997, and hence, must be followed.

However, in ascertaining whether or not this Court has jurisdiction in this particular case, **what ought to be weighed against PD 242 is not the NIRC of 1997, but RA 9282 which amended RA 1125.** RA 9282, expanded the jurisdiction of the CTA and elevated its rank to the level of a collegiate court **<u>with special jurisdiction</u>**.

The difference between a special law and a general law was also discussed in the PSALM case, citing *Vinzons-Chato v. Fortune Tobacco Corporation*, thus:

> 'A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only.
>
> A general law and a special law on the same subject are statutes in pari materia and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.
>
> The circumstance that the special law is passed before or after the general act does not change the principle. **Where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act;** and where the general act is later, the special statute will be

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> construed as remaining an exception to its terms, unless repealed expressly or by necessary implication." *(Emphasis supplied)*

Using the above standards, it is apparent that **PD 242 is a general law** on the authority of the Secretary of Justice to settle and adjudicate **all** disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including GOCCs while **RA 9282 is a specific law** vesting exclusive appellate jurisdiction on the CTA in cases pertaining to disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC of 1997.

Furthermore, in the construction of these two statutes, it is of utmost importance to note the following. **PD 242** was issued on **July 9, 1973**. The **Administrative Code of 1987** which embodies the provisions of PD 242 took effect on **November 24, 1989**. On the other hand, **RA 9282** which expanded the jurisdiction of the CTA and elevated its rank to the level of a collegiate court with special jurisdiction took effect on **April 23, 2004**. Once again, using the standards laid down in the *Vinzons-Chato* case, **RA 9282, the special law that was passed later, must be regarded as an exception to or qualification of PD 242, the prior general law.**

In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle, embodied in the maxim, *'ut res magis valeat quam pereat,'* that the courts should, if reasonably possible to do so without violence to the spirit and language of an act, so interpret the statute to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory.

Every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimum interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws.

It is to be noted that RA 9282, the special law that was passed later, had a repealing clause in Section 17 thereof which states:

> 'Section 17. *Repealing Clause.* — All laws, executive orders, executive issuances or letter of instructions, or any part thereof, inconsistent with or contrary to the provisions of this Act are hereby deemed repealed, amended or modified accordingly.'

The questions at this juncture are whether or not Sec. 7 (a) (2) of RA 9282 can be harmonized with PD 242/Administrative Code of 1987 and to what extent, if any, should both prior laws be repealed, amended or modified, as the case may be.

On the one hand, Sec. 7 of RA 9282 gives the CTA exclusive appellate jurisdiction over decisions or inaction of the CIR and other parties mentioned in the section regardless of who the parties are as long as they are taxpayers.

On the other hand, PD 242/Administrative Code of 1987 gives either the Solicitor General, the Government Corporate Counsel or the Secretary of Justice, as the case may be, jurisdiction over the administrative review of controversies between or among government offices, agencies and instrumentalities, including GOCCs regardless what the subject matter of the controversy is.

It has been said that if two or more laws on the same subject cannot possibly be reconciled or harmonized, one has to give way in favor of the other. There cannot be two conflicting laws on the same subject. Either the two laws are reconciled and harmonized or, if they cannot, the earlier one must yield to the later one, it being the later expression of legislative will.

Assuming that the laws under discussion are all impossible to reconcile, then it would seem that PD 242 and the Administrative Code of 1987 have been repealed by RA 9282, considering that not only is it the later enactment, having taken effect on April 23, 2004, but it is also a special law that must prevail over the general one.

However, the Court need not go to that extent as the laws under discussion may be reconciled. Taking our cue from RA 9282, the later enactment, the Court deems PD 242 and the Administrative Code of 1987 modified to the extent that **when the controversy between or among government offices, agencies and instrumentalities, including GOCCs involve any of the matters listed in Section 7**

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> **(a) thereof, then the CTA has exclusive appellate jurisdiction.** All other controversies between or among the aforementioned parties that do not involve taxation matters or interpretation of the provisions of the NIRC of 1997 may properly follow the procedure for administrative settlement or adjudication of disputes laid down in PD 242 and the Administrative Code of 1987.
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> Considering the foregoing discussion and the fact that the Petition was timely filed, this Court has jurisdiction over this case and will exercise it so." *(Citations omitted)*

Similar to above-cited case, it is my considered view that this Court has jurisdiction to entertain the present case and decide on the merits of the case.

All told, I vote to **GRANT** the present Petition for Review.

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