REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE MINING DEVELOPMENT CORPORATION,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE and THE OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE, in their official capacities as officers of the Bureau of Internal Revenue,
Respondents.

CTA Case No. 9292

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
JUL 05 2018 10:49 am

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R E S O L U T I O N

MANAHAN, *J.:*

This resolves petitioner's Motion for Reconsideration filed on April 26, 2018 praying that the case not be dismissed for lack of jurisdiction and its petition given due course. On May 21, 2018, respondents filed their Opposition (Re: Motion for Reconsideration) arguing that the case was correctly dismissed.

The assailed Decision, dated April 6, 2018, disposed of the case as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
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> Let a copy of this Decision be furnished to the Secretary of Justice.
>
> **SO ORDERED.**

The Court found that disputes and claims solely between government agencies and offices, including government owned and controlled corporations (GOCCs) should be brought before the Department of Justice (DOJ) following the administrative procedure outlined in Presidential Decree No. (PD) 242. As such, petitioner, being a GOCC in conflict with the BIR, which is government agency, said dispute and claims should have been brought before the DOJ.

In its motion, petitioner argues that the petition involved in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue* (*PSALM case*)[1] was an original action and not an appeal from a Bureau of Internal Revenue (BIR) assessment. As such, the facts in the *PSALM case* justified the filing of the petition for the settlement of the claim between the BIR and PSALM before the Department of Justice (DOJ). Petitioner insists that the Court of Tax Appeals (CTA) has jurisdiction over the instant petition for review under Section 7 of Republic Act No. (RA)1125; and, that the CTA exercises exclusive appellate jurisdiction over the Commissioner of Internal Revenue (CIR)'s decision on disputed assessments. Petitioner stresses that the *PSALM case* is an original action wherein the DOJ was asked to settle PSALM's claim against the BIR while this present case is an appeal from the CIR's Decision. Further, the former *PSALM case* involves purely questions of law. It did not challenge the mathematical computation of VAT deficiency but rather the application of VAT over the proceeds of the sale to private entities pursuant to its mandate. On the other hand, this case involves disputes not only on questions of law but also includes a protest on several grounds including the amount of alleged deficiency tax.

Petitioner also posits that the CTA still has jurisdiction over the instant case since at the time of its filing, the *PSALM case* has not yet been promulgated.

On the other hand, respondents, citing the *PSALM case*, state that petitioner is a government-owned and controlled corporation, and as such, it is the DOJ which has jurisdiction over the instant petition for review.

The motion lacks merit.

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

In the *PSALM* case, the Supreme Court *En Banc* was categorical in stating that PD 242 prevails over Section 4 of the 1997 NIRC with respect to intra-governmental disputes, *to wit*:

> 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 the 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.
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> To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards **private entities and the BIR**, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are **all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.
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> Furthermore, it should be noted that the 1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges. **On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities**. xxx xxx xxx
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> xxx xxx xxx
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> **Thus, even if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to 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. *an*

> Necessarily, such disputes must be resolved under PD 242 and not under the NIRC, precisely because PD 242 specifically mandates the settlement of such disputes in accordance with PD 242. PD 242 is a valid law prescribing the procedure for administrative settlement or adjudication of disputes among government offices, agencies, and instrumentalities under the executive control and supervision of the President.
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> xxx xxx xxx
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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 in the original, citations omitted*)

Since the Supreme Court has declared in the *PSALM case*, in no uncertain terms, that **all controversies involving government offices, bureaus, agencies and instrumentalities, including GOCCs fall within the initial jurisdiction of the DOJ – such interpretation must be respected by all courts.**[2] Unless and until modified by the Supreme Court *En Banc*, the interpretation of PD 242 in the *PSALM case* should be applied in determining the proper forum with jurisdiction to resolve disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government.[3]

In the instant case, petitioner Philippine Mining Development Corporation is a GOCC,[4] while respondent CIR represents the Bureau of Internal Revenue, another government agency. Clearly, this is a dispute solely between two government entities, and as such, following the ruling in the *PSALM case*, this Court has no jurisdiction.

Finally, the Court reiterates the discussion as to the applicability of the *PSALM case* notwithstanding the fact that the same was not yet promulgated when the instant petition was filed, following the ruling in *Commissioner of Internal*

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[2] *Metropolitan Waterworks and Sewerage System (MWSS) v. Commissioner of Internal Revenue*, CTA Case No. 9599, February 22, 2018.
[3] *Id.*
[4] Docket, Petition for Review, p. 10.

Revenue v. Secretary of Justice and Philippine Amusement and Gaming Corporation (PAGCOR case),[5] as follows:

> Despite the shift in the construction of P.D. No. 242 in relation to R.A. No. 1125, the Secretary of Justice still resolved PAGCOR's petitions on the merits, stating that:
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>> While this ruling (DBP) has been superseded by the ruling in *Philippine National Oil Company vs. CA*, in view of the prospective application of the PNOC ruling, we (the DOJ) are of the view that this Office can continue to assume jurisdiction over this case which was filed and has been pending with this Office since January 5, 2004 and rule on the merits of the case.
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> We disagree with the action of the Secretary of Justice.
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> PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004. *Philippine National Oil Company v. Court of Appeals* was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country, and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme

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[5] G.R. No. 177387, November 9, 2016.

> Court from whose decisions all other courts and everyone else should take their bearings. (*Underscoring supplied, citations omitted*)

Applying the doctrine laid down in the PAGCOR case, when an office (as the DOJ) assumes jurisdiction over a case at the time when the rules vest jurisdiction upon it, yet, during the pendency of such action, a new doctrine divests the office of the jurisdiction it originally exercised, the proper and prudent course of action to take would be to refer the case to the appropriate body to which jurisdiction has been subsequently vested.[6] Thus, this Court, having had ample opportunity to abide by the ruling in the PSALM case, has no jurisdiction over the petition for review filed by petitioner.

WHEREFORE, the instant Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[6] *Metropolitan Waterworks and Sewerage System (MWSS) v. Commissioner of Internal Revenue*, CTA Case No. 9599, February 22, 2018.