REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BANGKO SENTRAL NG PILIPINAS, *Petitioner,*

-versus-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

CTA Case No. 10106

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
FEB 15 2022 2:00pm

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DECISION

MANAHAN, *J.:*

This Petition for Review filed on July 5, 2019[1] by petitioner Bangko Sentral ng Pilipinas (BSP) prays that judgment be rendered ordering respondent Commissioner of Internal Revenue (CIR), to refund in favor of petitioner the amount of Php24,684.92 representing alleged erroneous payment of documentary stamp tax (DST).

THE PARTIES

Petitioner BSP is a government instrumentality created by virtue of Republic Act (RA) No. 7653 with principal office address at A. Mabini corner P. Ocampo Streets, Malate, Manila.[2] It is registered with the Bureau of Internal Revenue (BIR), under Tax Identification Number (TIN) 000-354-790.

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[1] Court Docket, pp. 10-26
[2] Petition for Review, paragraph 4.

Respondent CIR is the duly appointed head of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the 1997 National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

Sometime in 1998, the Rural Bank of San Miguel (RBSM) obtained an emergency loan from petitioner and executed several "Promissory Notes with Trust Receipt and Deed of Assignment" covering several parcels of land.[3] RSBM failed to pay its obligations under the emergency loan and as a result, the mortgaged properties were foreclosed and sold. Petitioner acquired one of the foreclosed properties located in Cabanatuan City as the highest bidder in the aforesaid extrajudicial foreclosure sale.

Petitioner allegedly paid capital gains tax (CGT) on the aforesaid transaction but the BIR assessed petitioner of documentary stamp tax (DST) as an additional tax on the foreclosure sale of the subject property.

Petitioner paid the deficiency DST through Credit Advice Ticket Number 13560 in the amount of Php 24,684.92,[4] with a notation "Payment Under Protest," on the contention that it is exempt from the payment of DST under the 1997 National Internal Revenue Code (NIRC), as amended.

Petitioner allegedly filed administrative claim for refund with the BIR's Revenue District Office (RDO) No. 23-B in Cabanatuan City embodied in letters dated June 18, 2018[5] and April 10, 2019.

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[3] Exhibits "P-1" and "P-2".
[4] Exhibits "P-7" and "P-8".
[5] Exhibit "P-9".

Due to the alleged inaction of respondent on its claim for refund of DST, petitioner filed a Petition for Review with this Court on July 5, 2019.

On August 15, 2019, respondent filed a Motion for Extension of Time to File Answer. This was granted by the Court in an Order dated August 22, 2019, giving him until August 30, 2019 within which to file his Answer.[6] The Court also directed respondent to certify and elevate the records of the instant case within ten (10) days from notice.

On August 27, 2019, respondent filed his *Answer* to the Petition for Review. [7]

On October 24, 2019, petitioner filed its Reply (to Respondent Commissioner of Internal Revenue's Answer dated 27 August 2019).

The pre-trial conference was initially set on October 17, 2019.[8]

Respondent's Pre-Trial Brief was filed on September 13, 2019,[9] while petitioner's Pre-Trial Brief was filed on October 11, 2019.[10]

On October 7, 2019, respondent filed a Manifestation informing the Court that a letter has already been sent to RDO 23-B located in Cabanatuan City requesting for the transmittal of the BIR Records relating to the instant case but was informed that they cannot find any document related to the case and as a result cannot comply with the Court's Order dated August 22, 2019.

On October 24, 2019, petitioner filed a Reply (to Respondent Commissioner of Internal Revenue's Answer dated 27 August 2019).[11]

In a Resolution dated November 6, 2019, the Court took note of respondent's Manifestation and reset the pre-trial conference to November 21, 2019.

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[6] Order dated August 22, 2019.
[7] Court Docket, pp. 59-63
[8] *Notice of Pre-trial Conference* dated September 2, 2019, Court Docket, page 66.
[9] Court Docket – pp. 74-75
[10] Court Docket, pp. 154-158.
[11] Court Docket, pp. 275-279.

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On December 6, 2019 the parties submitted their Joint Stipulation of Facts and Issues (JSFI).[12]

On February 3, 2020, a Pre-Trial Order was issued,[13] reiterating, *inter alia*, the facts and issue stipulated in the said JSFI, and deeming the termination of the Pre-Trial Conference.

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely:

1. Mr. Odillo Neil N. Garcia;
2. Mr. Christoffer Seann M. Pamatmat; and
3. Ms. Neriza L. Trinidad.

Petitioner filed its Formal Offer of Evidence on October 13, 2020.[14] Respondent filed his Comment (Re: Petitioner's Supplemental Offer of Evidence) on October 29, 2020.[15]

In the Resolution dated December 2, 2020,[16] the Court admitted the exhibits offered by petitioner except for Exhibit "P-3" which was denied admission for failure to present the original for comparison.

In this same Resolution, the Court mentioned that respondent's counsel manifested that she will no longer present any evidence.

On January 8, 2021, respondent filed his *Memorandum*,[17] while petitioner filed its Memorandum on January 13, 2021.[18]

This case was submitted for decision on February 1, 2021.[19]

THE ISSUE

As stipulated, the sole issue for the Court's determination is as follows:

> "Whether the BSP is entitled to a refund of DST in the amount of Twenty-Four Thousand Six Hundred

[12] Court Docket pp.313-317.
[13] Court Docket, pp. 330-335.
[14] Court Docket – pp. 370-384.
[15] Court Docket, pp. 420-421.
[16] Court Docket, pp. 427-428.
[17] Court Docket, pp. 429-438
[18] Court Docket, pp. 440-454.
[19] Court Resolution dated February 1, 2020.

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Eight-Four *(sic)* Pesos and Ninety-Two Centavos (P24,684.92) paid in preparation for the consolidation of subject property."

Petitioner's arguments:

Petitioner maintains that it is not liable to pay DST on the foreclosure sale of the subject property based on Section 199 (l) of the 1997 National Internal Revenue Code (NIRC), as amended, which provides as follows:

> "Section 199. *Documents and Papers Not Subject to Stamp Tax.* The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the payment of documentary stamp tax:
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> xxx xxx xxx
>
> (l) All contracts, deeds, documents and transactions related to the conduct of business of the Bangko Sentral ng Pilipinas."

Petitioner contends that it was not liable to pay DST on the foreclosure sale of the property of RBSM based on the above provision of the 1997 NIRC, as amended, and that it was made to pay DST in order to establish its right over the aforesaid property. Petitioner additionally alleges that it complied with all the substantial and procedural requirements for the filing of a claim for refund both in the administrative and judicial levels.

Respondent's counter-arguments:

Respondent alleges that petitioner failed to submit relevant documents to support its claim for refund of DST in the administrative level and considers the same as pro-forma which has the effect of not having been filed at all. Respondent then concludes that without a validly filed administrative claim for refund, the Court of Tax Appeals (CTA) is without jurisdiction to entertain the claim.

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In his Memorandum filed on January 8, 2021, respondent additionally points out that petitioner failed to establish that the claim for refund allegedly filed with RDO No. 23-B of Cabanatuan City was received by said office as there was no stamped received indicated in the document submitted during trial. Respondent belittles the probative value of the alleged follow up letter dated April 10, 2019 because he claims that this was returned to petitioner because it was sent to the wrong address of RDO No. 23-B of Cabanatuan City. That being said, respondent concludes that the Court has no jurisdiction to act on the instant Petition for Review for lack of a prior administrative claim for refund.

THE COURT'S RULING

Before going into the merits of the arguments of both parties, it is imperative that we determine first the Court's jurisdiction over the Petition for Review filed by petitioner BSP. It is well-settled that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action as any act it performs without jurisdiction is null and void.[20] In the case of *Mitsubishi Motors Philippines Corp. vs. Bureau of Customs,*[21] the Supreme Court emphasized the primacy of the issue of jurisdiction over all other issues and we quote:

> "Jurisdiction is defined as the power and authority of a court to hear, try and decide a case. **In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter.** It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has it to dismiss the action. (emphasis supplied)

The instant case involves two government agencies, i.e., the BSP and the CIR who is the representative of the BIR.

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[20] *Bernadette S. Bilag, et.al, vs. Estela Ay-ay, et.al.,* G.R. No. 189950, April 24, 2017.
[21] G.R. No. 209830, June 17, 2015.

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Section 1 of Presidential Decree (P.D.) No. 242 entitled "*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*" and now embodied in the Administrative Code of 1987, provides 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."

In interpreting the foregoing provision of P.D. No. 242, the Supreme Court in the case of *Power Sector Assets and Liabilities Management Corporation vs. CIR (PSALM* case)[22] clearly ruled that the administrative procedure provided therein should be followed in disputes and claims solely between government agencies and offices, including government-owned and controlled corporations, and we quote:

> "This case involves a dispute between PSALM and NPC [National Power Corporation], **which are both wholly government-owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants.** There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be**

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

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.** xxx xxx xxx

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The use of the word "shall" in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word "shall" means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned 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.

The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts.** xxx xxx xxx

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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.** Since this case is a dispute 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. xxx xxx xxx

xxx xxx xxx

The second paragraph of Section 4 of the 1997 NIRC, providing for the exclusive appellate jurisdiction of the CTA as regards the CIR's decisions on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC, is in conflict with PD 242. Under PD 242, **all** disputes and claims **solely** between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards **private entities and the BIR**, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are **all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.

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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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> **Thus, even if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to intra-governmental disputes**. PD 242 is a special law while the 1997 NIRC is a general law, insofar as disputes solely between or among government agencies are concerned. Necessarily, such disputes must be resolved under PD 242 and not under the NIRC, precisely because PD 242 specifically mandates the settlement of such disputes in accordance with PD 242. PD 242 is a valid law prescribing the procedure for administrative settlement or adjudication of disputes among government offices, agencies, and instrumentalities under the executive control and supervision of the President.
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> xxx xxx xxx
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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." (emphases supplied)

The petitioner in the instant case is the BSP and under RA No. 7653, otherwise known as the New Central Bank Act, it is classified as a government-owned corporation which enjoys fiscal and administrative autonomy pursuant to Section 1 thereof, quoted as follows:

> "Section 1. Declaration of Policy. – The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. **In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a government-owned corporation,**

> **shall enjoy fiscal and administrative autonomy."** (emphasis supplied)

Article XII, Section 20 of the 1987 Constitution provides, thus:

> **"Article XII**
>
> Section 20. The Congress shall establish an **independent central monetary authority,** the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions."

Based on the definitions provided under Executive Order (EO) 292 or the Administrative Code of 1987, BSP falls under the definition of "government instrumentality" and equally partakes of the nature of a government owned and controlled corporation (GOCC) under the same Code. Quoted below are the the applicable provisions of EO 292, *viz:*

> Executive Order No. 292
>
> Section 2. General Terms Defined. xxx. xxx.
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> (10) "**Instrumentality**" refers to any agency of the National Government, not integrated within the department framework vested within special functions or jurisdiction by law, **endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations**. (emphasis supplied)
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> xxx xxx xxx
>
> (13) **Government -owned or controlled corporation**" refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as

> in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations."

As stated earlier, petitioner BSP is a government-owned corporation and respondent CIR represents the BIR which is another government agency. Applying the ruling in the afore-quoted *PSALM* case, this Court has no jurisdiction to take cognizance of their dispute. Besides, as rationalized in the said case, the purpose of PD 242 is to provide a speedy and efficient administrative settlement or adjudication of disputes between government offices. Long-drawn tax litigation cases prejudice no less the government itself. Furthermore, the funds involved herein are public funds that go in and out of the same pockets.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(With Separate Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

BANGKO SENTRAL NG PILIPINAS, *Petitioner,*	**CTA CASE NO. 10106**
	MEMBERS:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**PROMULGATED:** FEB 15 2022 2:00pm

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I submit that this Court has jurisdiction to take cognizance of the present Petition for Review.

In *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue ("PSALM")*[1], the Supreme Court *En Banc*, in declaring that the resolution of disputes solely between government offices and agencies shall be administratively settled or adjudicated by the Secretary of Justice, Office of the Solicitor General or the Office of the Government Corporate Counsel, as the case may be, elucidated on the purpose of such procedure. What was highlighted therein is the applicability of the procedure only to government offices or agencies under the Executive Branch. Said the Supreme Court:

> "Xxx, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government-owned corporations, and the BIR, a**

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

government office, over the imposition of VAT on the sale of the two power plants. There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.**

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The law is clear and covers ***"all disputes, claims and controversies solely*** **between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements."** When the law says "all disputes, claims and controversies solely" among government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

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 <u>Executive branch</u>, as well as to filter cases to lessen the clogged dockets of the courts**. xxx xxx xxx.

PD 242 is only applicable to disputes, claims, and controversies **solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. **In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations.**

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Xxx since this case is a dispute **solely** between PSALM and NPC, both government-owned and controlled corporations, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case.

It is only proper that intra-governmental disputes be settled administratively since the **opposing government offices, agencies and instrumentalities are all under the <u>President's executive control and supervision</u>**.

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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.**

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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." *(Additional underscoring and boldfacing supplied)*

As stated in *PSALM*, 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. Thus, *PSALM* declares that 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.

In the present case, petitioner Bangko Sentral ng Pilipinas, a government-owned corporation, was established **to be an independent central monetary authority that enjoys fiscal and administrative autonomy.**

Section 20, Article XII of the 1987 Constitution states:

"Section 20. The Congress shall establish an **independent central monetary authority**, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

Until the Congress otherwise provides, the Central Bank of the Philippines operating under existing laws, shall function as the central monetary authority." *(Boldfacing supplied)*

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Relatedly, Sections 1 and 2 of Republic Act (RA) No. 7653, otherwise known as The New Central Bank Act, provide:

> "Section 1. *Declaration of Policy.* - The State shall maintain a **central monetary authority that shall function and operate as an independent and accountable body corporate** in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being **a government-owned corporation, shall enjoy fiscal and <u>administrative autonomy</u>**.
>
> Section 2. *Creation of the Bangko Sentral.* - There is hereby established an **independent central monetary authority**, which shall be a body corporate known as the Bangko Sentral ng Pilipinas, hereafter referred to as the Bangko Sentral.
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> Xxx xxx xxx." *(Boldfacing and undercoring supplied)*

While the Commissioner of Internal Revenue, the respondent in the present case, is under the President's executive control and supervision, petitioner Bangko Sentral ng Pilipinas, an independent central monetary authority that enjoys fiscal and <u>administrative autonomy</u>, is neither under the Executive Branch of the government nor under the President's supervision and control. Thus, the dispute between the parties in this case, which involves a claim for refund of documentary stamp tax, is not governed by PD 242.

Pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended, this Court is vested with exclusive appellate jurisdiction to review by appeal the inaction of respondent Commissioner of Internal Revenue in cases involving refunds of internal revenue taxes. Thus, this Court must necessarily take cognizance of the present Petition for Review.

All told, I VOTE to uphold the jurisdiction of this Court to take cognizance of the present Petition for Review and for this Court to resolve the case on the merits.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BANGKO SENTRAL NG PILIPINAS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10106

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

FEB 15 2022 2:00 pm

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SEPARATE CONCURRING OPINION

REYES-FAJARDO, J.:

The role of the Constitution cannot be overlooked. It is through the Constitution that the fundamental powers of government are established, limited and defined, and by which these powers are distributed among the several departments. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.[1]

The President of the Republic of the Philippines in the **exercise of executive power** as vested in Section 1, Article VII of the 1987 Constitution

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1 *Louis "Barok" C. Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 193036 and 193036, December 7, 2010.

and following Presidential Decree (PD) No. 242 has the power to place disputes between government offices on questions of law and of fact under the jurisdiction of the Secretary of Justice, even if the dispute involves the Bangko Sentral ng Pilipinas (BSP), a government instrumentality, statutorily created, although mandated under Section 20, Article XII of the Constitution to be "independent."

The Constitution restored the presidential system of government and the separation of legislative, executive, and judicial powers by their actual distribution among the three distinct branches of government with provision for checks and balances. The Supreme Court in *Dennis A. B. Funa v. The Chairman, Civil Service Commission,*[2] citing *Rufino v. Endriga,*[3] explicitly pronounced:

> **Every government office, entity or agency must fall under the Executive, Legislative, or Judicial branches, or must belong to one of the independent constitutional bodies, or must be a quasi-judicial body or local government unit. Otherwise, such government office, entity, or agency has no legal and constitutional basis for its existence.** (Emphasis supplied)

BSP does not fall under the legislative or judicial branches of government. It is also not one of the constitutional bodies. Neither is it a quasi-judicial body nor a local government unit. Under the Revised Administrative Code of 1987, any agency "not placed by law or order creating them under any specific department" falls "under the Office of the President."[4] In its own Petition, BSP recognizes its characterization as "a government instrumentality created by virtue of Republic Act (R.A.) No. 7653."[5]

Section 1, Article VII of the Constitution provides that "executive power shall be vested in the President of the Philippines." A government office in the Executive branch may not be put outside the control of the President in the guise of insulating that office from politics or making it independent. If

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2 *Dennis A. B. Funa v. The Chairman, Civil Service Commission, Francisco T. Duque III, Executive Secretary Leandro R. Mendoza, Office of the President,* G.R. No. 191672, November 25, 2014.

3 *Armita B. Rufino, Zenaida R. Tantoco, Lorenzo Calma, Rafael Simpao, Jr., and Freddie Garcia v. Baltazar N. Endriga, Ma. Paz D. Lagdameo, Patricia C. Sison, Irma Ponce-Enrile Potenciano, and Doreen Fernandez,* G.R. No. 139554, July 21, 2006.

4 Instituting the "Administrative Code of 1987," Executive Order (EO) No. 292, Title II, Chapter 8 (1987).

5 Petition for Review, p. 10.

the office is part of the Executive branch, it must remain subject to the control of the President.[6]

While the BSP is an instrumentality[7] of the government and a government owned corporation,[8] its creation is peculiar in that it was organized by Congress following the dictum of Section 20, Article XII of the Constitution, which mandates Congress to establish an "independent central monetary authority." Section 20 also states that "until congress provides otherwise, the Central Bank of the Philippines, operating under existing laws, shall function as the Central Monetary Authority."

The independence of the BSP as mandated by the Constitution and as defined by Republic Act (R.A.) No. 7653, as amended by R.A. No. 11211 (R.A. No. 7653, as amended), cannot deprive the President of his power of control, a power enshrined in the Constitution. As ruled by the Supreme Court in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue,*[9] "the President's constitutional power of control over all the executive departments, bureaus and offices cannot be curtailed or diminished by law." The presidential power of control is self-executing and does not require statutory implementation and its exercise may not be limited or withdrawn.[10]

The applicability of PD No. 242 to the dispute between the Bureau of Internal Revenue (BIR) and the BSP does not diminish the independence of the BSP as a central monetary authority.

Section 20, Article XII of the Constitution provides:

> SECTION 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority

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6 *Armita B. Rufino, Zenaida R. Tantoco, Lorenzo Calma, Rafael Simpao, Jr., and Freddie Garcia v. Baltazar N. Endriga, Ma. Paz D. Lagdameo, Patricia C. Sison, Irma Ponce-Enrile Potenciano, and Doreen Fernandez,* G.R. No. 139554, July 21, 2006.

7 *Republic of the Philippines, represented by the Philippine Reclamation Authority v. City of Paranaque,* G.R. No. 1911109, July 18, 2012.

8 New Central Bank Act, Republic Act No. 7653, Art. I, Sec. 1.

9 *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue,* G.R. No. 198147, August 8, 2017.

10 *Social Security System v. Commission on Audit,* G.R. No. 243278, November 3, 2020.

shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

Until the Congress otherwise provides, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority.

There is no other provision in the Constitution that sets forth the parameters of the independence of the BSP. It is Congress that is tasked to define said independence. Hence, its enabling law, R.A. No. 7653, as amended, provides in its *Declaration of Policy,* that *"the State shall maintain a central monetary authority that shall **function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking, and credit.**"*[11] In the *Declaration of Policy* of the BSP's enabling law, the term "independent" was qualified to refer only to the BSP's discharge of its mandated responsibilities concerning money, banking, and credit. In line with the independence granted to the BSP, its enabling law provides that the BSP shall enjoy "fiscal and administrative autonomy."[12] The Supreme Court has pronounced that the BSP is an independent body corporate bestowed under its charter with fiscal and administrative autonomy and its officials, under its charter, are granted a certain degree of flexibility in the performance of their duties, and unnecessary interference in their functions should not be allowed to counterfoil the **exercise of their regulatory mandate.**[13]

The BSP is not independent in the way that constitutional bodies such as Constitutional Commissions are independent. These constitutional bodies do not owe their existence to any act of Congress, but are created by the Constitution itself. The extent of the independence enjoyed by Constitutional Commissions is provided for in the Constitution. In contrast, the matters over which the BSP may exercise its power (such as its independence) must find sufficient anchorage on its enabling law.[14] Hence, Constitutional Commissions, which have been characterized under the Constitution as "independent," are not under the control of the President,

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11 New Central Bank Act, Republic Act No. 7653, Art. I, Sec. 1.

12 *Ibid.*

13 *Alberto V. Reyes, Wilfredo B. Domo-Ong and Herminio C. Principio v. Rural Bank of San Miguel (Bulacan), Inc.,* G.R. No. 154499, February 27, 2004.

14 *Bank of Commerce v. Planters Development Bank and Bangko Sentral ng Pilipinas,* G.R. Nos. 154470-71 and 154589-90, September 14, 2012.

even if they discharge functions that are executive in nature.[15] Also, the Members of the Constitutional Commission may be removed from office through impeachment for and conviction of acts as enumerated in the Constitution.[16] Fr. Joaquin G. Bernas, SJ, a member of the Constitutional Commission that drafted the Constitution, citing the Records of the Constitutional Commission, noted that the independence of the BSP as contemplated by the Constitution "does not have the same status as the Constitutional Commissions."[17]

The exercise of the executive power of the President enshrined in the Constitution and fundamental in our presidential system of government has primacy over the independence of BSP. No law can limit the exercise of the President's executive power. While the extent of independence of BSP is defined by law, executive power of the President is not only set forth by the Constitution but in fact, cannot be limited only to the specific powers enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated. It would not be accurate, however, to state that "executive power" is the power to enforce the laws, for the President is head of state as well as head of government and whatever powers inhere in such positions pertain to the office unless the Constitution itself withholds it.[18]

In addition, the application of PD No. 242 neither contravenes the independence of the BSP nor diminishes the jurisdiction of the Court. As in the case of *Philippine Veterans Investment Development Corp. (PHIVIDEC) & PHIVIDEC Industrial Authority v. Hon. Alejandro M. Velez and Philippine Veterans Assistance Commission (PVAC),*[19] it "does not diminish the jurisdiction of courts but 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 government-owned or controlled corporations."

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15 *Sixto S. Brillantes, Jr. v. Haydee B. Yorac*, G.R. No. 93867, December 18, 1990.
16 PHILIPPINE CONSTITUTION OF 1987, Art. XI, Sec. 2.
17 Bernas, Joaquin G., The 1987 Constitution of the Republic of the Philippines: A Commentary, 2009 ed., p. 1235 *citing* III RECORD, CONSTITUTIONAL COMMISSION 267-269, 612, 696.
18 *Ferdinand E. Marcos v. Honorable Raul Manglapus*, G.R. No. 88211, September 15, 1989.
19 *Philippine Veterans Investment Development Corp. (PHIVIDEC) & PHIVIDEC Industrial Authority v. Hon. Alejandro M. Velez and Philippine Veterans Assistance Commission (PVAC)*, G.R. No. 84295, July 18, 1991.

From all the foregoing, I vote for the dismissal of the Petition for Review for lack of jurisdiction.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice