REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

DEPARTMENT OF ENERGY REPRESENTED BY SECRETARY ALFONSO G. CUSI,	**CTA EB No. 2241** (CTA Case No. 10198)
Petitioner,	***Present:***
	DEL ROSARIO, *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN,**
- versus -	**MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE CAESAR R. DULAY,	***Promulgated:***
Respondent.	MAY 2 4 2022 3:27

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RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION (on the Decision dated 04 November 2021)"** filed on December 3, 2021, with respondent's **"COMMENT/OPPOSITION (on Petitioner's Motion for Reconsideration dated 03 December 2021)"** filed on February 16, 2022. In the said Motion, petitioner prays for the setting aside of the Court's Decision dated November 4, 2021, the dispositive portion of which reads:

> "**WHEREFORE**, considering the required affirmative vote of at least five (5) members of the Court *En Banc* was not obtained in the instant case, pursuant to ***Section 2 of the CTA Law*** in relation to ***Section 3, Rule 2 of the Revised Rules of the CTA,*** the instant Petition is hereby **DENIED.** The Assailed Resolutions, dated 8 November 2019 and 30 January 2020, hereby **STAND AFFIRMED.**
>
> **SO ORDERED.**"

In support of its Motion, petitioner argues that:

1. The *ponencia* correctly ruled that the CTA has jurisdiction over the DOE's original Petition for Review.

2. The ruling in the PSALM case stemmed from a different factual milieu.

3. The BIR failed to observe procedural due process.

4. There was improper service of the FLD/FAN on the DOE.

5. BIR's failure to observe due process of law justifies the quashal of the assessment and warrants.

6. Only the CTA can provide the reliefs sought by the DOE.

In his Comment, respondent asserts that:

1. The CTA correctly ruled that it has jurisdiction over cases involving two government entities.

2. The CTA, however, erred in ruling that the Court in Division has jurisdiction over the original Petition for Review. The assessments involved in the instant case have already become final, executory and demandable. Thus, the CTA cannot take cognizance of the original Petition.

THE COURT'S RULING

Petitioner's Motion lacks merit.

Jurisdiction is the power of a court, tribunal, or officer to hear, try, and decide a case.[1] Emanating from the sovereign authority that organizes courts,[2] jurisdiction over the subject matter is conferred by law.

As a result, absent a statutory grant, the actions, representations, declarations, or omissions of a party will not serve to vest jurisdiction over the subject matter in a court, board, or officer.[3] Simply put, judicial or quasi-judicial jurisdiction *cannot* be conferred upon a tribunal by the parties alone.[4]

Accordingly, despite the agreement of both parties that the CTA can exercise jurisdiction over tax disputes between two government entities, the majority of the Court *En Banc* affirms the action of the Court in Division, in dismissing the case for *lack of jurisdiction*.

Sections 66, 67, and 68 of Chapter 14, Book IV of Executive Order (E.O.) No. 292, otherwise known as the Administrative Code of 1987, lays down the guidelines in settling disputes, claims and controversies between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations (GOCCs), to wit:

> "**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.

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[1] *Victoria Manufacturing Corporation Employees Union vs. Victoria Manufacturing Corporation,* G.R. No. 234446, July 24, 2019, citing *Anama v. Citibank, N.A. (formerly First National City Bank)*, G.R. No. 192048, December 13, 2017.

[2] *Id.*, citing *El Banco Español-Filipino v. Palanca*, 37 Phil. 921 (1918).

[3] *Id.*, citing *Machado, et al. vs. Gatdula, et al.*, 626 Phil. 457 (2010).

[4] *Id.*, citing *Fruehauf Electronics Philippines Corporation vs. Technology Electronics Assembly and Management Pacific Corporation,* 800 Phil. 721 (2016).

> **SEC. 67.** ***Disputes Involving Questions of Law.*** — **<u>All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as *ex officio* legal adviser of all government-owned or controlled corporations</u>**. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.
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> **SEC. 68.** ***Disputes Involving Questions of Fact and Law.*** — **<u>Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:</u>**
>
> (1) **<u>The Solicitor General</u>**, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and
>
> (2) **<u>The Secretary of Justice</u>**, in all other cases not falling under paragraph (1)." *(Emphases supplied)*

From the foregoing provisions, cases involving only questions of law, between and among departments, bureaus, offices, agencies and instrumentalities of the National Government, including GOCCs, shall be submitted to and settled or adjudicated by the Secretary of Justice (SOJ). On the other hand, cases involving mixed questions of law and of fact, or purely factual issues shall be submitted to the Solicitor General if the latter is the principal law officer or general counsel of the parties, otherwise, the issues shall be submitted to and resolved by the SOJ.

In the case of ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue (PSALM case)***,[5] the Supreme Court *En Banc* explained the foregoing provisions, as well as its predecessor, P.D. No. 242, which were substantially the same, as follows:

> "The primary issue in this case is whether the DOJ Secretary has jurisdiction over OSJ Case No. 2007-3

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

which involves the resolution of whether the sale of the Pantabangan-Masiway Plant and Magat Plant is subject to VAT.

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

However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants**. There is no question that original jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved**. As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. Sections 1, 2, and 3 of PD 242 read:

> ***Section 1.*** **Provisions of law to the contrary notwithstanding, *all disputes, claims and controversies* solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or**

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> **adjudicated as provided hereinafter**: Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree.
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> ***Section 2.*** **In all cases involving only questions of law, the same *shall* be submitted to and settled or adjudicated by the Secretary of Justice**, as Attorney General and ex officio adviser of all government owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. **His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.**
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> ***Section 3***. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:
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> (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;
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> (b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and
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> (c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b). x x x

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

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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 corporation, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case x x x

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

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

Furthermore, it should be noted that the 1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges. **On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities.** . .

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Thus, even if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to 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. . ."

It is thus established that where the disputing parties are ***all*** public entities, the case shall be governed by P.D. No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987), which requires that it shall be administratively settled or adjudicated in the manner provided therein, *i.e.,* the matter shall be brought either before the Secretary of Justice or the Solicitor General, as the case may be.

The Supreme Court, sitting *En Banc,* was categorical in ruling that when the law says *'all disputes, claims and controversies solely'* among government agencies, **the law means all, without exception**. It was, however, emphasized that P.D. No. 242 will only apply when all the parties involved are purely government offices and/or GOCCs.

The conflicting provisions of NIRC of 1997 and P.D. No. 242 was likewise noted by the Supreme Court *En Banc*. Under P.D. No. 242, it is provided that all disputes and claims solely between government agencies and offices, including GOCCs are within the jurisdiction of the SOJ, the Solicitor General, or the Government Corporate Counsel, as the case may be. On the other hand, Section 4 of the NIRC of 1997, as amended, provides that the CTA has exclusive appellate jurisdiction as regards the petitioner'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.

In order to harmonize these seemingly conflicting laws, the Supreme Court adopted the following interpretation in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, to wit:

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1. As regards ***private entities and the BIR***, the decision of petitioner is subject to the exclusive appellate jurisdiction of this Court, in accordance with Section 4 of the NIRC; and

2. Where the ***disputing parties are all public entities***, the case shall be governed by P.D. No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987), where the dispute shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

In fact, the foregoing summation of rules was subsequently affirmed and applied in the case of ***Commissioner of Internal Revenue vs. The Secretary of Justice and Metropolitan Cebu Water District (MCWD)***,[6] 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, pursuant to P.D. No. 198, also known as the Provincial Water Utilities Act of 1973. Thus, unless and until the foregoing interpretation is modified by the Supreme Court, sitting *En Banc*, this Court is mandated to apply the same, as judicial decisions applying or interpreting the laws or the Constitution shall form a part of the law of the land.[7]

In this case, it is undisputed that **both** of the parties involved are **public entities**, as the dispute is between the Department of Energy and the Bureau of Internal Revenue, both of which are government entities.

Considering that both parties are public entities under the Executive Branch of the government, the instant case should be governed by P.D. No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987) and not by the NIRC of 1997, as amended, considering that the disputing parties are both government entities. Accordingly, jurisdiction over the case vests with the SOJ, and not with the Court in Division.

The instant case is different from the factual milieu set in ***Philippine National Oil Company vs. The Hon. Court of Appeals, et al., and Philippine National Bank vs. The Hon. Court of Appeals, et al.,***[8] which involves three types of parties, namely: a

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[6] G.R. No. 209289, July 9, 2018.
[7] *See* Article 8, Civil Code of the Philippines.
[8] G.R. Nos. 109976 and 112800, April 26, 2005.

government bureau (BIR), GOCCs (PNOC and PNB), as well as a *private citizen* (Tirso Savellano). Thus, P.D. No. 242 was not applicable to the dispute involved in the said case.

Likewise, the case of ***Orion Water District, represented by its General Manager, Crispin Q. Tria, et al., vs. The Government Service Insurance System,***[9] did not merit the application of the provisions of E.O. No. 292 (formerly Section 1 of P.D. No. 242), as the case involves a dispute which is ***not*** solely between and among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including GOCCs. Rather, the case also involved officials of the Orion Water District, and not solely between the GSIS and the Orion Water District.

As for the 2019 case of ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue,***[10] it is true that in the said case, the CTA was not divested of its jurisdiction. However, it is noted that the issue of jurisdiction was *not* raised as an issue by the parties and the Supreme Court *never passed upon the said issue*. It is settled that any issue, whether raised or not by the parties, but not passed upon by the Court, does not have any value as precedent.[11] Hence, the subject 2019 PSALM case fails to persuade.

It bears stressing that lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[12] Thus, the Court in Division was correct in dismissing the instant case for lack of jurisdiction.

WHEREFORE, premises considered, the instant **MOTION FOR RECONSIDERATION (on the Decision dated 04 November 2021)** is hereby **DENIED** for lack of merit.

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[9] G.R. No. 195382, June 15, 2016.

[10] G.R. No. 226556, July 3, 2019.

[11] *Commissioner of Internal Revenue vs. San Roque Power Corporation/Taganito Mining Corporation vs. Commissioner of Internal Revenue/Philex Mining Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 187485, 196113, 197156, February 12, 2013.

[12] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With due respect, I join the Dissenting Opinion of Justice San Pedro)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I have a Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, I join the Dissenting Opinion of Justice San Pedro)
LANEE S. CUI-DAVID
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

DEPARTMENT OF ENERGY REPRESENTED BY SECRETARY ALFONSO G. CUSI, *Petitioner,*	**CTA *EB* NO. 2241** *(CTA Case No. 10198)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE CAESAR R. DULAY, *Respondent.*	Promulgated: MAY 24 2022 3:20

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DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I respectfully dissent from the Decision penned by honorable Associate Justice Erlinda P. Uy, denying the instant Petition for Review for lack of merit, and affirming the assailed Resolutions, dated 8 November 2019 and 30 January 2020, of the Court in Division pursuant to ***Presidential Decree No. 242 ("PD 242"),*** and the case of ***Power Sector Assets and Liabilities Management Corporation ("PSALM") v. Commissioner of Internal Revenue ("CIR") ("PSALM Case").***[1]

Similar to my position in previous cases involving the same issue of whether this Court has jurisdiction over disputes and claims solely between the Bureau of Internal Revenue ("BIR") and another government entity, it is my humble opinion that the Court of Tax Appeals ("CTA") has jurisdiction

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

over the present case, by virtue of the ***National Internal Revenue Code, as amended***, and ***Republic Act No. ("RA") 1125*, as amended by *RA 9282 and RA 9503***, which provide for the **exclusive appellate jurisdiction of the CTA** over decisions or inactions by the Commissioner of Internal Revenue involving internal revenue taxes.

The PSALM Case is not applicable to the present case.

In the ***PSALM Case,*** the Supreme Court ruled that under ***PD 242***, all disputes and claims solely between government agencies and offices, including GOCCs shall be resolved by the Department of Justice ("DOJ") or the Office of the Solicitor General ("OSG") depending on the issue involved:

> "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 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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> 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.'"

Following this reasoning, the Supreme Court ruled that the DOJ and not the CTA had jurisdiction over the issue involved in the ***PSALM Case.*** However, the facts involved in the ***PSALM Case*** differ from the traditional tax assessment cases elevated before the CTA.

A distinct element of said 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 would pay under protest to the BIR basic VAT amounting to Php3,813,080,472.00. 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 is favorable to NPC and PSALM would be tantamount to the 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 was 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 appealed to the Supreme Court, which decreed that the DOJ indeed has jurisdiction.

The Supreme Court, in ***University of the East v. Veronica M. Masangkay,***[2] provided that in order to apply the principle of *stare decisis,* the facts and issues of the subject case must be in all fours with the factual milieu of the case precedent sought to be utilized, 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.
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> 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.
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> 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.**

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

> Here, **We find that the Rocamora case is not on all fours with the present dispute, thereby removing it from the application of the principle of *stare decisis.*** *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 supplied.)

Thus, in order for the ruling in the ***PSALM Case*** to be equally applicable to the present controversy, there must be a similarity in the facts and issues involved in both cases. The facts involved in the ***PSALM Case*** and the present case, however, are outright different.

In the case at bar, the facts involved are as follows:[3]

a. Petitioner received the PAN. Under the PAN, petitioner was subjected to deficiency excise taxes and given fifteen (15) days within which to contest the assessment; otherwise, an FLD/FAN would be issued;
b. Petitioner responded to the PAN through a letter, dated 20 December 2018;
c. No further communication was received from respondent until 19 September 2019, when petitioner received the WDL, which was allegedly based on an FLD/FAN issued against petitioner; and
d. On 21 October 2019, petitioner filed the original Petition for Review before the Court in Division.

It is easy to see how there is, indeed, no similarity between the facts and issues of the instant case and those of the ***PSALM Case***, as narrated above.

To reiterate, 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 ***NIRC*** in the ***PSALM Case***. On the other hand, the actions of the parties were governed by the MOA the entered into. Accordingly, PSALM could not have sought recourse with the CTA, even if it wanted to, as the CTA would have no jurisdiction over the same. 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.[4] Hence, with the execution of the MOA and in accordance with its terms, the

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[3] Division Docket, pp. 2-5.
[4] Section 3, Rule 4, Revised Rules of the CTA.

CIR and PSALM 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) (1) of RA 1125, as amended by RA 9282*** and ***RA 9503 ("CTA Law")***, particularly on the application of the CTA's "other matters" 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.

Undoubtedly, then, the principle of *stare decisis* is inapplicable to the present case, making the doctrines and principles enunciated in the ***PSALM Case*** equally inapplicable to the present controversy.

<u>Not all controversies between or among national government entities fall under the coverage of PD 242 .</u>

In ***Orion Water District, et. al. v. The Government Service Insurance System ("Orion Case")***,[5] the High Court ruled that not all controversies between or among national government entities fall under the mandate of ***PD 242***. The ***Orion Case*** provides:

> **<u>"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.</u> 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:**
>
>> 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)

[5] 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.

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.'

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.

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.

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.)

It becomes clear in the ***Orion Case*** that ***PD 242*** merely prescribes an administrative procedure for the settlement of controversies between governments agencies and offices, specifically "**for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements**". In the words of Orion, "**(I)t does not intrude into the jurisdiction of regular courts**," here, the CTA.

Equally clear is that the instant case does not fall within the scope of ***PD 242*** since the original Petition for Review filed before the Court in Division does not involve the interpretation of a statute, contract, or agreement but an issue questioning the correctness of the tax collection proceedings instituted by respondent against petitioner, which is certainly within the jurisdiction of the CTA.

The Court in Division's ruling is contrary to the Constitution.

To affirm the ruling of the Court in Division dismissing the instant case for lack of jurisdiction is to run against the constitutional mandate of the judiciary under ***Article VIII, Section I of the 1987 Constitution*** which states:

> "Section I. The **judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.**
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."
> (Emphasis and underscoring supplied.)

Judicial Power is defined as "the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights."[6] The concept behind the same was further elaborated by the Supreme Court in the case of ***Lopez v. Roxas***,[7] to wit:

> "This provision **vests in the judicial branch of the government, not merely *some* specified or *limited* judicial power, but 'the' judicial power under our political system, and, accordingly, the entirety or 'all' of said power, except, only, so much as the Constitution confers upon some other agency,** such as the power to 'judge all contests relating to the election, returns and qualifications' of members of the Senate and those of the House of Representatives which is vested by the fundamental

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[6] Lopez v. Roxas, L-25716, 28 July 1966.
[7] *Ibid.*

law solely in the Senate Electoral Tribunal and the House Electoral Tribunal, respectively.

Judicial power is the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights. The proper exercise of said authority requires legislative action: (1) defining such enforceable and demandable rights and/or prescribing remedies for violations thereof; and (2) determining the court with jurisdiction to hear and decide said controversies or disputes, in the first instance and/or on appeal. For this reason, the Constitution ordains that 'Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts,' subject to the limitations set forth in the fundamental law."
(Emphasis and underscoring supplied.)

Based on the foregoing, the lower courts' exercise of authority to settle justiciable controversies or disputes is dependent on legislative action, meaning the jurisdiction of the lower courts must first be defined by Congress through a law before it can exercise its judicial power. However, it is also undeniable that, once said right is granted, the lower courts' power to decide on cases is absolute, except if limited by the constitution or by law.

As in the case of the CTA, Congress enacted the ***CTA Law***, which is once again cited, as follows:

"Section 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; xxx "
(Emphasis, Ours)

To reiterate, the original Petition for Review filed before the Court in Division involves an issue questioning the correctness of the assessment issued by the authorized representative of the Commissioner of Internal Revenue. The ***CTA Law*** does not provide for an exception or limit as to the jurisdiction of the CTA over disputed assessments. Hence, the case clearly falls under ***Section 7(a)(1) of the CTA Law.***

Aside from the ***CTA Law***, ***Section 4 of the National Internal Revenue Code of 1997, as amended*** is also clear that disputed assessments fall under the jurisdiction of the CTA, to wit:

> "SEC. 4. ***Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*** - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> **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 this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."**
> (Emphasis supplied.)

All told, the CTA must exercise jurisdiction over the instant case, lest it be deemed to have abandoned its Constitutional obligation to rule over disputed assessments such as that presented in the instant case.

RA 1125, as amended by RA 9282 and RA 9503, is the exception to the general law that is PD 242.

Notwithstanding the doctrine in the ***PSALM Case***, ***PD 242*** cannot divest CTA of its judicial power to exercise jurisdiction over the present controversy. As already demonstrated above, from the way the relevant provisions in ***PD 242*** are worded, it simply serves as a general rule that all disputes, claims, and controversies between national government entities shall be settled by either the OSG or the DOJ. ***RA 9282*** (which was an amendatory law to the ***CTA Law***, the original statute which created the CTA) works as an exception: when it comes to the inaction and decisions of the CIR 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, the CTA shall have jurisdiction.

It is worthy to emphasize that jurisdiction over tax cases between or among national government entities is either with the CTA or with the DOJ; it cannot be with both. Therefore, "[e]ither 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."[8] Further emphasizing this need

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[8] Ruben E. Agpalo, Statutory Construction, Fifth Edition 2003, p.272, citing *City of Naga v. Agna,* G.R. No. L-36049, 31 May 1976, and *Erana v. Vergel de Dios,* G.R. No. L-3393, 23 November 1949.

to reconcile contradictory laws is ***Section 17 of RA 9282*** which states, to wit:

> "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."

Accordingly, the ***CTA Law*** prevails.

In fact, this matter was discussed by the Supreme Court in ***Philippine National Oil Company v. Court of Appeals, et al. and Philippine National Bank v. Court of Appeals, et al. ("PNOC Case")***,[9] as follows:

> "When there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. The following rule should principally govern instead:
>
>> **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.
>>
>> Specific legislation upon a particular subject is not affected by a general law upon the same subject unless it clearly appears that the provisions of the two laws are so repugnant that the legislators must have intended by the later to modify or repeal the earlier legislation. The special act and the general law must stand together, the one as the law of the particular subject and the other as the general law of the land. (*Ex Parte United States, 226 U. S., 420; 57 L. ed., 281; Ex Parte Crow Dog, 109 U. S., 556; 27 L. ed., 1030; Partee vs. St. Louis & S. F. R. Co.*, 204 Fed. Rep., 970.)
>>
>> **<u>Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a</u>**

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[9] G.R. Nos. 109976 and 112800, 26 April 2005.

> **conflict.** (*Crane v. Reeder and Reeder, 22 Mich., 322, 334; University of Utah vs. Richards*, 77 Am. St. Rep., 928.)
>
> **It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails – *Generalia specialibus non derogant.***
>
> **Sustained herein is the contention of private respondent Savellano that P.D. No. 242 is a general law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies.** It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines. **On the other hand, Rep. Act No. 1125 is a special law dealing with a specific subject matter – the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein.**
>
> Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect Rep. Act No. 1125. **Rep. Act No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242.** Disputes, claims and controversies, falling under Section 7 of Rep. Act No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, and the fact that P.D. No. 242 is the more recent law is no longer significant."
> (Emphasis and underscoring supplied.)

Therefore, to insist that the original Petition for Review filed before the Court in Division falls under the jurisdiction of the OSG or the DOJ is anathema to ***Article VIII, Section 1 of the 1987 Constitution***, established laws and jurisprudence. Indeed, upholding the Assailed Resolutions by the Court in Division effectively deprives the CTA of its judicial power to decide on disputes clearly falling under its jurisdiction.

The CTA has undoubted expertise in tax cases.

More importantly, the CTA is in the best position to handle tax cases effectively and efficiently due to its expertise on the subject. This is evident in the ***Abstract of House Bill No. 6673*** where it is shown that ***RA No. 9282*** was enacted to avoid delays in the final disposition of tax cases, to effectively change and maximize the development of jurisprudence and judicial precedence on all tax matters, and to improve tax collection, to wit:

> **"The bill seeks to lodge with the Court of Tax Appeals (CTA) both criminal and civil jurisdictions over tax and customs cases in order to avoid needless delays in the final disposition of such cases.** The vesting of both criminal and civic jurisdictions of a tax case in one court **will likewise effectively change and maximize the development of jurisprudence and judicial precedence on all tax matters which is of vital importance to revenue administration.** The bill also seeks to elevate the rank of the CT A to the level of the Sandiganbayan, widen its organizational structure and expand its jurisdiction. **The approval of the bill is seen to improve the tax collection efficiency of the Bureau of Internal Revenue, the Bureau of Customs and other revenue collecting agencies of the government."**
> (Emphasis and underscoring, Ours)

This expertise of the CTA in tax matters was stressed in ***Macario Lim Gaw, Jr. v. CIR***,[10] where it was stated that the "CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems." This was, in fact, the basis of the Dissent of the Honorable Retired Justice Mariano del Castillo in the ***PSALM Case***:

> "xxx Unlike the Secretary of Justice, the BIR and the CTA have developed expertise on tax matters. It is only but logical that they should have exclusive jurisdiction to decide on these matters. The authority of the Secretary of Justice under PD 242 to settle and adjudicate all disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, therefore, does not include tax disputes, which are clearly under the jurisdiction of the BIR and the CTA."

Thus, all tax disputes and issues should fall under the exclusive jurisdiction of the CTA.

Recent jurisprudence shows that the Supreme Court recognized the CTA's jurisdiction over tax issues involving national government entities.

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

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[10] G.R. No. 222837, 23 July 2018.
[11] G.R. No. 177387, 9 November 2016.

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.[12]

In a July 2019 case involving PSALM itself entitled ***PSALM v. Commissioner of Internal Revenue***,[13] the Supreme Court cancelled an assessment made by respondent without divesting the CTA of its jurisdiction.

Also, in a 2020 case entitled ***Commissioner of Internal Revenue v. Bases Conversion and Development Authority***,[14] 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***,[15] the Supreme Court even remanded the case, which involves the BCDA, as one of its parties back to the CTA for further proceedings.

Clearly, to date, and despite the ruling in the ***PSALM Case***, the Supreme Court acknowledges the CTA's exercise of jurisdiction over tax cases between or among national government entities.

I am aware that, in the Dissenting Opinion penned by Presiding Justice Roman G. Del Rosario in the Decision I drafted for this case, he is of the opinion that despite the dispositions made by the Supreme Court in the above cited cases (*i.e.*, wherein the Supreme Court did not question the jurisdiction of the CTA over tax issues and disputes although solely between or among government offices and corporations, and even remanded some of the cases back to the CTA for further factual findings), the same does not modify the principles laid down in the ***PSALM Case***, considering that the issue on whether the CTA has jurisdiction over tax issues solely between or among government offices and corporations has not been raised and passed upon in said cases, and, as such, has no value as precedent.

It should be noted, however, that under ***Section 1, Rule 9 of the Rules of Court***, **"when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter..., the court shall dismiss the claim."** This means that when the issue involved is the

[12] *PAGCOR v. CIR*, G.R. Nos. 210689, 210704 and 210725, 22 November 2017.
[13] G.R. No. 226556, 3 July 2019.
[14] G.R. No. 217898, 15 January 2020.
[15] G.R. No. 205466, 11 January 2021.

jurisdiction over the subject matter, a Court, especially the Supreme Court, may *motu propio* dismiss a claim if it is found based on the pleadings and/or evidence on record that a Court actually has no jurisdiction over the subject matter.[16]

Indeed, if the CTA had no jurisdiction to rule on tax issues and disputes between or among government offices or corporations, the Supreme Court should have dismissed the above-cited cases outright. The above-mentioned cases clearly involved tax issues and disputes between or among government offices or corporations. And if we are to apply the CTA *En Banc's* majority opinion, the CTA did not have jurisdiction over the appeals made thereto in each of the above cited cases. Accordingly, the Supreme Court should have dismissed these claims *motu propio.* But it did not. This only shows that the Supreme Court is also of the view that the CTA has exclusive appellate jurisdiction over tax issues and disputes even between or among government offices or corporations.

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 create a dangerous precedent and raise the question as to whether similar cases already decided by the CTA should be voided. The prevailing rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void.[17]

Premises considered, I therefore vote to **GRANT** petitioner's Motion for Reconsideration, **REVERSE** and **SET ASIDE** the Assailed Resolutions, dated 8 November 2019 and 30 January 2020, and **REMAND** the case to the Court in Division to proceed with the trial with due and deliberate dispatch.

Respectfully submitted.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[16] *P.L. Uy Realty Corporation v. ALS Management and Development Corporation and Antonio S. Litonjua,* G.R. No. 166462, 24 October 2012.
[17] *Sebastian v. Spouses Cruz, et al.,* G.R. No. 220940, 20 March 2017.