REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO), represented by its General Manager, MELQUIADES A. ROBLES, *Petitioner,*	**CTA Case No. 11554** Members: **MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
-versus-	
THE COMMISSIONER OF INTERNAL REVENUE (CIR), BUREAU OF INTERNAL REVENUE (BIR), *Respondent.*	Promulgated: OCT 08 2024 3:58 p.m.

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RESOLUTION

The present *Petition for Review With Prayer for Exemption from the Payment of Filing Fees* (hereafter referred to as the "Petition") assails the following issuances of respondent in connection with petitioner's Application for Abatement of Penalties covering taxable years (TYs) 2016, 2019 and 2020: two (2) Notices of Denial dated May 28, 2024 for TY 2016 and 2019, and Notice of Denial dated June 11, 2024 for TY 2020 (hereafter collectively referred to as "assailed Notices of Denial").

The Petition was filed by the Philippine Charity Sweepstakes Office (PCSO) which is alleged to be a government instrumentality existing by virtue of Republic Act (RA) No. 1169, otherwise known as An Act Providing for Charity Sweepstakes, Horse Races, and Lotteries (hereafter referred to as the "Charter"), as amended.[1]

Impleaded as respondent is the Bureau of Internal Revenue (BIR), headed by the Commissioner of Internal Revenue (CIR), likewise alleged to be a government agency or instrumentality with the mandate to properly and justly enforce tax laws and collect taxes.[2]

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[1] *Petition for Review*, Docket – Vol. I, p. 1.
[2] *Id.*, p. 2.

In sum, petitioner alleges that for TY 2016, 2019 and 2020, respectively, it received deficiency tax assessments from respondent which it already paid and settled. For each of the aforementioned years, it filed an Application for Abatement of Penalties, which respondent denied through the assailed Notices of Denial. Petitioner further alleges that it is a government instrumentality exempt from the payment of docket fees under Section 21, Rule 141 of the Rules of Court.

Petitioner thus prays for the instant Petition to be given due course, and for a reversal of the assailed Notices of Denial.[3]

After careful evaluation of the allegations in the Petition, We find that the same should be dismissed for lack of jurisdiction.

Section 1, Rule 9 of the Rules of Court provides:

> Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter**, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, **the court shall dismiss the claim.** *(Emphasis supplied)*

It is a well-settled rule that a jurisdictional issue may be invoked by the Court *motu proprio* and may be raised at any stage of the proceedings.[4] The reason is that jurisdiction is conferred by law, and the lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[5] When a court has no jurisdiction over the subject matter of the action, the only power it has is to dismiss it.[6] Further, jurisdiction over the subject matter is determined by the nature of the action as appearing from the averments in the complaint or other initiatory pleading.[7]

Incidentally, Presidential Decree No. 242[8] (PD 242) provides that either the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, as the case may be, shall be the proper

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[3] *Id.*, p. 16.
[4] *Commissioner of Internal Revenue v. Mirant Pagbilao Corp.*, G.R. No. 180434, January 20, 2016.
[5] *Sales v. Barro*, G.R. No. 171678, December 10, 2008.
[6] *Mitsubishi Motors Phils. Corp. v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[7] *Penta Pacific Realty Corp. v. Ley Construction and Development Corp.*, G.R. No. 161589, November 24, 2014.
[8] *Procedure for Administrative Settlement or Adjudication of Disputes, Claims and Controversies Between or Among Government Offices*, Presidential Decree No. 242, July 9, 1973.

authority to settle or adjudicate disputes, claims and controversies between or among government agencies and instrumentalities, including government-owned and controlled corporations (GOCCs). Sections 1, 2 and 3 of the said law provide:

> 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 government-owned or controlled corporations but excluding constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.
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> SECTION 2. In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the **Secretary of Justice**, as Attorney General and ex-officio legal 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. cdtai
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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 of 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). *(Emphasis supplied)*

The foregoing provisions are now embodied in Sections 66 to 68 of Chapter 14, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987, to wit:

> *CHAPTER 14 - Controversies among Government offices and Corporations*

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

In *Power Sector Assets and Liabilities Management Corp. (PSALM) v. Commissioner of Internal Revenue*,[9] the Supreme Court *En Banc* held that disputes, claims, and controversies **solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including GOCCs, where no private party is involved, shall be governed by PD 242, and not the National Internal Revenue Code (NIRC), as amended. The relevant ruling of the said case provides:

> 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

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

dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction.

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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.**

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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.**

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To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: **(1) As regards private entities and the BIR,** the power to decide

> disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and **(2) Where the disputing parties are all public entities** (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.
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> 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 intragovernmental disputes... **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.** *(Emphasis supplied and citations omitted)*

In the more recent case of *The Department of Energy (DOE) v. Court of Tax Appeals,*[10] the Supreme Court held that the ruling in the *PSALM case* is not limited to disputes arising from contracts or the same scenario which brought about the action, but was instructive for future scenarios, *viz.*:

> A reading of *PSALM v. CIR* clearly demonstrates that the decision was not merely hinged on the existence of the MOA among the government agencies concerned, but moreso on the very fact that there is a dispute among two government-owned or -controlled corporations, PSALM and the NPC, on the one hand, and a national government office, the BIR, on the other.
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> **Through *PSALM v. CIR*, the Court harmonized conflicting laws, provided guidelines for when disputes ought to be referred to administrative settlement, and clarified the appropriate arbiter based on the nature of the issues.** Thus, the decision was not limited to the same scenario which brought about the action, but was to be instructive for future scenarios conforming with the parameters drawn by the Court.
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> **To hold that *PSALM v. CIR* is applicable only to disputes, claims, or controversies, arising out of contracts or agreements among government agencies, to the exclusion of the other sources of disputes enumerated in Section 1 of P.D. No. 242, is to adopt a dangerously narrow interpretation.** *(Emphasis supplied and citations omitted)*

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

Applying the foregoing statutory and jurisprudential precepts, when, based on the allegations in the Petition, the Court finds the subject matter of the case to be a dispute between or among government agencies and offices, including GOCCs, the Court may dismiss the case outright for lack of jurisdiction, considering that the proper authority to take cognizance of the matter is the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues involved, pursuant to PD 242.

In the Petition, both parties are found to be government entities. Petitioner alleges that it is a government instrumentality[11] while respondent is also alleged to be a government agency or instrumentality.[12] Given the foregoing, whether petitioner is a government instrumentality as it claims to be or a GOCC, it is clear that the Petition involves a purely intra-governmental dispute.

Accordingly, the Court has no jurisdiction over the present case, pursuant to the pronouncement of the Supreme Court *En Banc* in the *PSALM case* which remains binding in determining the proper forum to resolve disputes and claims solely between and among the departments, bureaus, offices, agencies, and instrumentalities of the National Government, including GOCCs.

WHEREFORE, premises considered, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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

HENRY S. ANGELES
Associate Justice

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[11] *Supra*, note 1.
[12] *Supra*, note 2.