REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DUTY FREE PHILIPPINES CORPORATION, *Petitioner,*	CTA EB No. 1911 (CTA CASE No. 9355)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR.,
BUREAU OF INTERNAL REVENUE REPRESENTED BY KIM S. JACINTO-HENARES, AND/OR NESTOR S. VALEROSO, OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE, *Respondents.*	UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
	Promulgated: DEC 13 2019

x---3:23p.m.-------x

RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is the Motion for Reconsideration filed by Duty Free Philippines Corporation (DFPC)[1] on August 1, 2019, seeking to set aside this Court's Decision promulgated on July 5, 2019,[2] the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petition for Review filed by Duty Free Philippines Corporation is hereby **DENIED.** The assailed Decision and Resolution dated May 8, 2018 and July 26, 2018, respectively, in CTA Case No. 9355 are hereby **AFFIRMED.**

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[1] *En Banc* Docket, pp. 87-109.
[2] *Ibid.,* pp. 942-973.

SO ORDERED."

In its motion, DFPC reiterates that this Court has jurisdiction over the case and the Supreme Court ruling that disputes and claims solely between the BIR and another government entity shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel under Presidential Decree (PD) No. 242, as enunciated in the case of *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue (the "PSALM Case"),*[3] is not applicable in this case.

The CIR on the other hand filed his Comment to the Motion for Reconsideration,[4] and counters that since the dispute in this case is solely between two government entities, the jurisdiction to dispose the matters raised therein is vested in the Secretary of Justice and not in this Court.

After a careful consideration and evaluation of the parties' respective arguments, the Court finds that the arguments raised in DFPC's Motion for Reconsideration are mere rehash of its arguments in its Petition for Review, and have already been amply discussed, passed upon and considered by this Court in the Assailed Decision sought to be reconsidered.

To reiterate, under the *PSALM* case, the Supreme Court *En Banc* categorically declared that pursuant to Sections 2 and 3 of PD No. 242, jurisdiction over tax controversies solely between government entities lies with the Secretary of Justice and not with this Court.

DFPC tries to argue with the Court that the *PSALM Case* involves a dispute between two agencies by virtue of a Memorandum of Agreement and the collection of the CIR therein was not based on a tax assessment, thus, cannot be applied in its case. However, in the more recent case of *Commissioner of Internal Revenue vs. Department of*

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[3] G.R. No. 198146 dated August 8, 2017.
[4] *Supra* note 1, pp. 115-121.

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Justice, et al.,[5] the Supreme Court explicitly declared that tax disputes solely between government entities is covered by PD No. 242 and must be settled before the Secretary of Justice and not with this Court.

Clearly, there is no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO See Concurring Opinion
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(with Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

DUTY FREE PHILIPPINES, CORPORATION,
Petitioner,

-*versus*-

BUREAU OF INTERNAL REVENUE REPRESENTED BY KIM S. JACINTO-HENARES, AND/OR NESTOR S. VALEROSO, OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE
Respondent.

CTA EB NO. 1911
(CTA Case No. 9355)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

Promulgated:
DEC 13 2019

x- 3:23p.m. -x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Motion for Reconsideration filed by Duty Free Philippines Corporation.

As elucidated in the *ponencia*, this Court is bereft of jurisdiction to take cognizance of the present case as it involves a dispute solely between a government-owned and controlled corporation and a government bureau, consistent with the categorical pronouncement of the Supreme Court in ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue***[1] *("PSALM").*

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

Considering the implication of the pronouncement in *PSALM* to cases pending before the Court of Tax Appeals (CTA) involving *intra-governmental disputes or controversies,* I find it necessary to re-visit the development of jurisprudence anent the application of Presidential Decree (PD) No. 242 *vis-à-vis* Republic Act (RA) No. 1125, as amended.

In **1981**, the Supreme Court *En Banc*, in ***Development Bank of the Philippines vs. Court of Appeals***,[2] affirmed the findings of the Court of Appeals which ruled that the CTA had no jurisdiction to resolve the controversy between Development Bank of the Philippines, a GOCC, and the Commissioner of Customs and that the case should have been decided in accordance with the mode of settlement and adjudication set forth in PD No. 242. Anent the conflict between the provisions of PD No. 242 and RA No. 1125, the Supreme Court *En Banc* held:

> "The Court also rejects the DBP's second argument and expresses with the conclusion of the Court of Appeals- and the basic premises thereof that there is an "irreconcilable repugnancy ... between Section 7(2) of R.A. No. 1125 and P.D. No. 242," and hence, that the later enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier."

In **2005**, the Supreme Court *En Banc* promulgated ***Philippine National Oil Company vs. The Honorable Court of Appeals et al.***[3] ***("PNOC")*** declaring that CTA has jurisdiction to resolve controversies falling under RA No. 1125, the provision of PD No. 242 notwithstanding. It then made a categorical pronouncement that RA No. 1125 (the law creating the CTA), which is a special law, prevails over PD No. 242, *viz.*:

> "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." (Boldfacing supplied)

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[2] G.R. No. 86625, December 22, 1981.

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

In *PNOC*, the Supreme Court went on to clarify that even if PD No. 242 is made to prevail over RA No. 1125, its provisions may not be applied as the dispute involved is **not solely an intra-governmental controversy**. The pertinent pronouncement of the Supreme Court *En Banc* reads:

> "Even if, for the sake of argument, that P.D. No. 242 should prevail over Rep. Act No. 1125, the present dispute would still not be covered by P.D. No. 242. Section 1 of P.D. No. 242 explicitly provides that only disputes, claims and controversies, ***solely*** between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices or agencies, as well as government-owned and controlled corporations, shall be administratively settled or adjudicated. While the BIR is obviously a government bureau, and both PNOC and PNB are government-owned and controlled corporations, **respondent Savellano is a private citizen**. His standing in the controversy could not be lightly brushed aside. It was private respondent Savellano who gave the BIR the information that resulted in the investigation of PNOC and PNB; who requested the BIR Commissioner to reconsider the compromise agreement in question; and who initiated CTA Case No. 4249 by filing a Petition for Review." (Boldfacing supplied)

In **2016**, the First Division of the Supreme Court, in ***Commissioner of Internal Revenue vs. Secretary of Justice and Philippine Amusement and Gaming Corporation[4] ("PAGCOR")***, reiterated and applied the doctrine laid down in *PNOC* as it held that the Secretary of Justice is bereft of jurisdiction in reviewing the disputed tax assessments issued by the CIR against the Philippine Amusement and Gaming Corporation (PAGCOR).

Under Section 4 (3) of Article VIII of the 1987 Constitution, the doctrine enunciated by the Supreme Court *En Banc* in *PNOC* could only be modified or reversed by a subsequent decision of the Supreme Court *En Banc*.[5]

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[4] G.R. No. 177387, November 9, 2016.
[5] "ARTICLE VIII
JUDICIAL DEPARTMENT
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(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: *Provided,* that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc." (Boldfacing supplied)

As *PNOC* - - the case cited in the Dissenting Opinion of Honorable Associate Justice Maria Rowena Modesto-San Pedro - - **has been overturned by the Supreme Court *En Banc* in *PSALM*, this Court is left with no recourse but to apply *PSALM* in the present case**.

In *PSALM*, the Supreme Court *En Banc* is categorical in declaring that the resolution of **ALL** disputes solely between departments, bureaus, offices, agencies and instrumentalities of the National Government shall be **administratively settled** or adjudicated by the Secretary of Justice. The pertinent portions of the Supreme Court's disquisition read:

> "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 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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> xxx xxx xxx
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> Xxx. When the law says "all disputes, claims and controversies solely" among government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.
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> 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 <u>lessen the clogged dockets of the courts</u>**. 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.

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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 President's executive control and supervision**.

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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

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." (Underscoring supplied)

The Supreme Court *En Banc* also distinguished *PSALM* from *PNOC* by emphasizing that the dispute in *PSALM* is **solely** between a bureau and two (2) GOCCs while the controversy in *PNOC* involves a private citizen, *viz.*:

"This case is different from the case of *Philippine National Oil Company v. Court of Appeals*, (PNOC v. CA) which involves not only the BIR (a government bureau) and the PNOC and PNB (both government owned or controlled corporations), but also respondent Tirso Savellano, **a private citizen**. Clearly, PD 242 is not applicable to the case of PNOC v. CA. Even the *ponencia* in *PNOC v. CA* stated that the dispute in that case is not covered by PD 242 xxx."

In rendering *PSALM*, the Supreme Court *En Banc* was mindful of its earlier pronouncement in *PNOC* that the CTA has jurisdiction over intra-governmental disputes, the provisions of PD No. 242 notwithstanding. **Yet, the Supreme Court *En Banc*, after reviewing its ruling in *PNOC,* found sufficient basis to modify the doctrine laid down therein and plainly stated in *PSALM* that jurisdiction**

over intra-governmental disputes shall be governed by PD No. 242.

Jurisdiction is vested by law. Since the Supreme Court has reconciled and interpreted the provisions of PD No. 242 and RA No. 1125, as amended, and declared in *PSALM*, in no uncertain terms, that all controversies involving government offices, bureaus, agencies and instrumentalities, including GOCCs fall within the initial jurisdiction of the Department of Justice (DOJ) - - such interpretation must be respected by all courts.

I am not unaware that in the following cases, the Supreme Court apparently recognized the CTA's jurisdiction in acting on the cases despite the fact that the controversies therein involved government-owned and controlled corporations and the Bureau of Internal Revenue: (i) ***Philippine Amusement and Gaming Corporation vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Philippine Amusement and Gaming Corporation***,[6] where the Supreme Court remanded the case to the CTA for the determination of the final amount to be paid by PAGCOR; (ii) ***Bases Conversion and Development Authority vs. Commissioner of Internal Revenue***,[7] where the Supreme Court remanded the case to the CTA for further proceedings regarding Bases Conversion and Development Authority's claim for refund of Creditable Withholding Tax; and, (iii) ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue***,[8] where the Supreme Court granted PSALM's petition and reversed and set aside the decision of the CTA which found PSALM liable to pay deficiency value-added tax for the taxable year 2008, inclusive of the deficiency interest and delinquency interest.

A careful perusal of the facts involved in the aforementioned cases, however, would reveal that they cannot be relied upon as precedent regarding the matter of administrative settlement. Truth to tell, there was no adjudication therein anent the issue on the jurisdiction of the CTA on *intra-governmental disputes or controversies* nor to the development of jurisprudence anent the application of PD No. 242 *vis-à-vis* RA No. 1125, as amended.

In ***Commissioner of Internal Revenue vs. San Roque Power Corporation / Taganito Mining Corporation vs. Commissioner of***

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[6] G.R. No. 210689 and G.R. Nos. 210704 & 210725, November 22, 2017.
[7] G.R. No. 205925, June 20, 2018.
[8] G.R. No. 226556, July 3, 2019.

Internal Revenue / Philex Mining Corporation vs. Commissioner of Internal Revenue,[9] the Supreme Court was categorical in holding that **an issue which was not passed upon has no value as precedent**. Said the Supreme Court:

> **"Any issue, whether raised or not by the parties, *but not passed upon by the Court,* does not have any value as precedent**. As this Court has explained as early as 1926:
>
> > It is contended, however, that the question before us was answered and resolved against the contention of the appellant in the case of *Bautista vs. Fajardo* (38 Phil. 624). In that case no question was raised nor was it even suggested that said section 216 did not apply to a public officer. That question was not discussed nor referred to by any of the parties interested in that case. It has been frequently decided that the fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity, where that question is squarely and properly raised and presented. **Where a question passes the Court *sub silentio*, the case in which the question was so passed is not binding on the Court (*McGirr vs. Hamilton and Abreu*, 30 Phil. 563), nor should it be considered as a precedent**. (*U.S. vs. Noriega and Tobias*, 31 Phil. 310; *Chicote vs. Acasio*, 31 Phil. 401; *U.S. vs. More*, 3 Cranch [U.S.] 159, 172; *U.S. vs. Sanges*, 144 U.S. 310, 319; *Cross vs. Burke*, 146 U.S. 82.) For the reasons given in the case of *McGirr vs. Hamilton and Abreu*, supra, the decision in the case of *Bautista vs. Fajardo*, supra, can have no binding force in the interpretation of the question presented here. (Emphasis supplied)"

PSALM remains the jurisprudence that categorically settled the jurisdiction of the DOJ on *intra-governmental disputes or controversies*. Unless and until modified by the Supreme Court *En Banc*, the interpretation of PD No. 242 in *PSALM* should be applied in determining the proper forum with jurisdiction to resolve disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government.

Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings. [10] Any pronouncement made by the Supreme Court in its judicial decisions becomes the law of the land.[11] Adherence to the

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[9] G.R. Nos. 187485, 196113, 197156, February 12, 2013.

[10] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003.

[11] Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines., Civil Code of the Philippines.

principle of *stare decisis et non quieta movere* is mandated for all lower courts, and as such this Court should follow suit and apply the doctrine laid down in *PSALM*.

All told, I **CONCUR** with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

DUTY FREE PHILIPPINES CORPORATION, *Petitioner,*	**CTA *EB* NO. 1911** *(CTA Case No. 9355)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
BUREAU OF INTERNAL REVENUE REPRESENTED BY KIM S. JACINTO-HENARES, AND/OR NESTOR S. VALEROSO, OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE, *Respondent.*	Promulgated: **DEC 13 2019** 3:23 p.m.

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DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I respectfully dissent from the Decision penned by honorable Associate Justice Cielito N. Mindaro-Grulla, denying the instant Motion for Reconsideration for lack of jurisdiction pursuant to *Presidential Decree No. 242 ("PD 242"),* and the cases of *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue ("PSALM Case")*[1] and *Commissioner of Internal Revenue v. Department of Justice, et al.*[2]

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 over the present case, by virtue of the *1997 National Internal Revenue Code,* and *Republic Act No. ("RA") 1125*, as amended by *RA 9282,* which provide

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1 G.R. No. 198146, 8 August 2017.
2 G.R. No. 209289, 9 July 2018.

for the **exclusive appellate jurisdiction of the CTA** over decisions or inactions by the Commissioner of Internal Revenue involving internal revenue taxes.

In matters involving tax disputes, *PD 242,* which is merely a general law that deals with the administrative settlement of disputes solely between or among government entities, must give way to *RA 9282,* a specialized law enacted to precisely deal with tax issues and controversies.[3] It is only logical that the CTA should have exclusive jurisdiction to decide on these matters[4] since it already developed the necessary expertise on the subject of taxation as it is a specialized court dedicated exclusively to the study and resolution of tax problems.[5]

Further, the Supreme Court already declared that not all controversies solely between or among government entities fall under the provisions of *PD 242.* Following the ejusdem generis rule on statutory construction, disputes that are subject to administrative settlement under *PD 242* "must relate to the interpretation and application of statutes, contracts or agreements, or any other cases of similar nature."[6] Considering that tax disputes and controversies are neither similar nor analogous to the given enumeration, settlement of tax issues between the BIR and another government entity is not covered by *PD 242.*

Premises considered, I therefore vote to grant the instant Motion for Reconsideration and reverse the Decision dated 5 July 2019.

Respectfully submitted.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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3 *PNOC v. CA, et. al.,* G.R. No. 109976, 26 April 2005.
4 *See Dissenting Opinion of Justice Mariano del Castillo, PSALM Case.*
5 *Macario Lim Gaw, Jr. v. CIR,* G.R. No. 222837, 23 July 2018.
6 *Orion Water District, et. al. v. GSIS, G.R. No. 195382, 15 June 2016.*