REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

PNOC DEVELOPMENT AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1486
(CTA Case No. 8649)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

FEB 19 2018 4:17 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is the Petition for Review filed by petitioner PNOC Development and Management Corporation (PDMC) seeking partial modification of the Decision dated January 22, 2016[1] (Assailed Decision) insofar as: a) the VAT imposed on the sale of the 2A lots to Majestic Technical Support (MTS) be reconsidered and reversed; b) the lack of due process on the part of PDMC be duly considered; c) the Manifestation stating that an Application for Compromise Agreement as early as July 31, 2014 be noted and applied to the remaining tax liability; and d) the additional twenty percent (20%) deficiency interest and twenty percent (20%) delinquency interest be deleted.

[1] *Rollo,* pp. 27-72.

The Assailed Decision of this Court's First Division in CTA Case No. 8649, entitled *"PNOC Philippine Development and Management Corporation vs. Commissioner of Internal Revenue"* partially granted the petition to cancel and withdraw the Formal Assessment Notice (FAN) dated August 31, 2012 issued by respondent Commissioner of Internal Revenue (CIR), finding PDMC liable for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and final withholding VAT, inclusive of surcharge and interest, in the aggregate amount of ₱155,384,621.84 for the taxable year 2007.

THE PARTIES

Petitioner PDMC is a government-owned and -controlled corporation created under the Corporation Code. It is the real estate arm of the Philippine National Oil Company (PNOC) and holds business at the 2nd Floor PNOC Building 5, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.[2]

The Bureau of Internal Revenue (BIR), through public respondent CIR, is the agency of the government tasked with the enforcement of revenue laws and collection of taxes and duties, including, among others, the power to examine tax returns and determine tax due, credit or refund internal revenue taxes erroneously/excessively or illegally paid, assessed or collected.[3]

THE FACTS[4]

On August 31, 2012, PDMC received the Formal Assessment Notice dated August 31, 2012,[5] relative to the investigation of its internal revenue tax liabilities for 2007 under Letter of Authority No. 12471 dated February 16, 2009, the summary of which is shown hereunder:

Internal Revenue Taxes	
Income Tax	₱ 8,624,441.50
VAT	142,051,725.12
EWT	604,093.34
WTC	1,829,658.69
Final Withholding Tax of VAT	2,274,703.19
Total	**₱155,384,621.84**

[2] *Docket*, p. 546, Par. 6, Stipulation of Facts, Joint Motion to Approve Stipulation of Facts and Issues (JSFI).
[3] *Id.*, pp. 544 to 545, Par. 2, Stipulation of Facts, JSFI.
[4] As found by the First Division, *id.* at Note 1, pp. 27-37.
[5] *Id.* at Note 2, pp. 692 to 693, Exhibit "P-6".

A twenty percent (20%) interest had been imposed pursuant to Section 249 of the NIRC of 1997, as amended. The fifty percent (50%) surcharge had been imposed on deficiency VAT pursuant to Section 248(8) of the NIRC of 1997, as amended, for substantial under-declaration of sale of more than thirty percent (30%) of the actual sales declared per return.[6]

On September 28, 2012, PDMC filed with the BIR its Administrative Protest Letters, all dated September 25, 2012,[7] against each of the assessed deficiency taxes.[8]

The CIR failed to act on PDMC's protest,[9] prompting PDMC to file the Petition for Review[10] docketed as CTA Case No. 8649 on April 26, 2013.

After being granted an extension[11], the CIR filed his Answer on June 24, 2013,[12] interposing the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

5. [PDMC's] claim for the cancellation of assessment against it in the instant *Petition* has no basis in fact and in law. Allow us to state the reasons below.

6. ***On the question of deficiency of income tax:***

    6.1 **Disallowed expense due to non-withholding of tax (₱8,965,389.20).** Upon examination and verification, it was revealed that petitioner failed to withhold and remit the expanded withholding tax on its income payments to Top 10K, Directors Fee, Management and Consultancy Fees, commissions, and rentals pursuant to Sections 57 and 58 of the National Internal Revenue Code of 1997, as amended *('Tax Code')*. Thus, those expenses claimed by petitioner were disallowed pursuant to Section 34(K) of the Tax Code, which provides that:

[6] *Id.*, p. 545, Par. 3, Stipulation of Facts, JSFI.
[7] *Id.*, pp. 882 to 885 and pp. 898 to 907, Exhibits "P-39" and "P-40".
[8] *Id.*, p. 545, Par. 4, Stipulation of Facts, JSFI.
[9] *Id.*, p. 545, par. 5, Stipulation of Facts, JSFI.
[10] *Id.*, pp. 6 to 21.
[11] *Id.* p. 141, Order dated June 3, 2013.
[12] *Id.*, pp. 142 to 152.

> 'xxx any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction **<u>only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue.'</u>** ***(Emphases and underlining all provided)***

[PDMC] also argues that the discrepancy in its claims refers to income payments which are not subject to expanded withholding taxes. However, it failed to substantiate its claim as no supporting documents were submitted, resulting in the denial of its claim.

6.2 **As to salaries and wages not subjected to withholding tax (₱3,801,744.22).** Investigation of [PDMC's] account revealed that it failed to withhold and remit the required withholding tax from its compensation payment in the amount of ₱3,801,744.22, resulting in the disallowance of its claim for deduction from gross income pursuant to Sec. 34(K) of the Tax Code.

[PDMC] presented a reconciliation showing its revised computation of those compensation payments not subject to a withholding tax amounting to ₱492,914.26. However, it failed to submit substantiating documents to back up its claims, hence, it was also disallowed.

6.3 **As to the under-declared income from unaccounted expenses (₱91,677.34).** Further verification of petitioner's claimed expenses in relation to its income payments subject to expanded withholding tax revealed that there was an undisclosed professional fee amounting to ₱91,677.34, which is presumed as under-declared income following the case of *Perez vs. CTA* (G.R. No. L-10507, May 30, 1958). Also, a reconciliation was also presented by petitioner, but it was also not substantiated. For those reasons, petitioner was assessed in accordance with Sec. 32 of the Tax Code.

6.4 **Disallowed creditable tax withheld (₱53,700.00).** In the investigation of [PDMC's] tax records, its claimed creditable tax withheld resulted to disallowance in the total amount of ₱6,866,742.80.

The amount of ₱53,700.00 thereof represents the amount claimed to be withheld by Sta. Lucia Realty & Development, Inc. covers the period from January 1, 2006 up to December 31, 2006, which was disallowed for those claims are out of period.

As to the amount of ₱7,066,958.75 representing rental income withheld by SM Prime Holdings, Inc., further analysis has shown that only the amount of ₱253,915.43 representing only five percent (5%) of the rental income declared as ₱5,078,318.65 can be allowed following Sec. 2.58.3(A) and (B) of Revenue Regulations ('RR') No. 2-98, which we reproduce below:

'SECTION 2.58.3. Claim for Tax Credit or Refund.-

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee **in the quarter of the taxable year in which the income was earned or received**.

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only **when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax**

<u>**withheld therefrom**</u>." ***(emphases and underlining all provided)***

Finally, [PDMC] also contends that the certificate dated 2006 of Sta. Lucia Realty & Development, Inc. should be given credit since the corresponding income was reported in 2007. However, such claim cannot be verified and no other substantiating document was submitted by [PDMC], resulting in the disallowance of [PDMC's] claim.

7. ***On the question of deficiency value added tax:***

7.1. As to various sales/receipts not subjected to Value-Added Tax ('VAT') (₱142,545,406.66). Upon investigation, it was disclosed that [PDMC] failed to subject to corresponding output tax its sales/receipts amounting to ₱129,389,138.10, resulting in its assessment following Sec. 106 of the Tax Code.

[PDMC] claims that its housing sales are socialized housing sales which are not covered by VAT, including also its other transactions. But it failed to provide specific details with supporting documents on which of its sales are socialized housing and VAT-exempt sales. For that, its claims were not given merit.

Lastly, [PDMC] claims that its sales to SM Prime Holdings, Inc. was made in a public bidding, thus, the VAT should be computed based on bid/selling price, even citing BIR Rulings and Revenue Memorandum Orders ('RMO'). But those citations are not applicable in the matter at hand, as the subject in [PDMC's] citations involve income tax and documentary stamp tax, and not VAT. Also, notification alone to prospective buyers does not in any way establish that there was a sale that passed through a public bidding as laid down in RMO No. 41-91. And finally, [PDMC] once more failed to submit pertinent documents that will substantiate its allegations, hence, the assessment.

7.2. **As to the sale of real property to Majestic Technical Skills (₱336,913,020.20).** [PDMC] contends that the real property it sold to Majestic Technical Skills is a capital asset as it was previously owned by the then-Filoil Refinery Corporation *('Filoil');* that the same asset was sold in accordance with privatization; and that the same property is idle and being treated and held as an asset account that is considered as property equipment in its books, hence, not subject to VAT.

However, investigation made by [the CIR] shows that even when Filoil held the subject real property, it was already treated as an ordinary asset for it was intended and used primarily in the business of oil refinery and its related businesses. Moreover, it must be pointed out that petitioner was incorporated under the *Batas Pambansa Bilang 68* or the Corporation Code, therefore, it is also taxable in the same way and manner as any other regular corporations incorporated under the general corporation laws.

7.3. **As to unsupported tax credit deducted against payable VAT (₱492,436.66).** Verification disclosed that [PDMC] claimed a tax credit amounting to ₱492,436.66, but it was found out that there neither was a proper classification of said claim nor was it supported by proper documents, which inevitably resulted in the disallowance of such claim in accordance with Sec. 110 of the Tax Code.

Furthermore, [PDMC's] attempts to prove its entitlement in the said tax credit by presenting ledger and VAT Return for the first quarter of taxable year 2007 as evidence of alleged excess input tax for purchases from prior years was also not given due course, for the proper and best evidence to substantiate such claim was not submitted, that is, the VAT Return(s) for taxable year 2006.

8. ***On the question of deficiency in the expanded withholding tax*** **(₱310,817.69).** Investigation of [PDMC]

disclosed that it failed to withhold and remit the required expanded withholding tax and there was no submission of supporting documents as to the income payments, resulting in the assessment of ₱310,817.69 representing deficient expanded withholding tax, in accordance with the provisions of Sec. 2.57.2 of RR No. 2-98, as amended.

9. ***On the question of deficiency in the withholding tax on compensation.*** **(₱941,394.73).** Verification of [PDMC's] records also reveals that there it failed to withhold and remit the required withholding tax of ₱941,394.73 from its compensation payment in the total amount of ₱3,801,744.22, in accordance with the provisions of Sec. 2.58 of RR No. 2-98, as amended.

10. ***As to deficiency in the final withholding VAT*** **(₱1,168,731.23).** As per investigation, there are income payments/expenses not subjected by [PDMC] to a final withholding VAT 'amounting to ₱1,168,731.23. Also, no supporting documents were submitted to justify those income payments/expenses. Accordingly, it was assessed following the provisions of Sec. 4.114(A)(1) of RR 2-98, as amended.

11. It is worth stressing that [PDMC] judicially admitted in its petition that its primary purpose, among others, are to **'acquire by purchase, exchange, lease, donation grant, foreclosure or otherwise**, lands, interest in lands, real property and buildings of every class and description and to own, hold, establish, provide, possess, rebuild, alter, improve, reforest, develop, utilize, manage, subdivide, sell, exchange, lease, mortgage, securitize and **hold for investment or otherwise, real estate**.' Thus, for such fact alone, [PDMC] cannot lay claim that its actions of selling real estate does not come under the conduct of being in the course of trade or business making them exempt from VAT, when facts and even [PDMC's] records otherwise hold.

12. Moreover, [PDMC] is laying claim to the Commission on Audit's *('COA')* classification of its real properties as enough basis to be treated as capital assets, hence, exempt from VAT. However such claim has no merit for **nowhere in the Balance Sheet issued by the COA that such properties were clearly and explicitly stated as capital asset**. It is

only [PDMC] that makes such assertion when the GOA Balance Sheet does not show on its face such fact.

13. As to [PDMC's] invocation of BIR Rulings which allegedly exempts it from the operation of VAT, suffice it to state that such rulings cannot be claimed by [PDMC], **for those rulings are issued in favor of another taxpayer, and not to [PDMC]**. For [PDMC] to be exempt from VAT, its position must first be verified and confirmed by the BIR through a specific ruling secured by it. Otherwise, [PDMC] cannot be allowed to claim an outright exemption.

14. ***As to assessment of interest and surcharge.*** Suffice it to state that for substantial under-declaration of sales of more than 30% of the actual sales declared per return, it is but proper that such imposition is made pursuant to Sec. 248(B) of the Tax Code.

15. Also, as it is found out that there is a false return with intent to evade tax or failure to file a return, the assessment of taxes was made within the prescription period, that is, ten (10) years after the discovery of the falsity, in accordance with Sec. 203 of the Tax Code.

16. No evidence was submitted by the [PDMC] to disprove such findings by [the CIR]. Thus, the assailed assessments are to be presumed correct. As held by the Honorable Supreme Court in the case of ***Tan Guan vs. The Court of Tax Appeals*** **(G.R. No. L-23676, April 27, 1967):**

> 'The Commissioner of Internal Revenue, sustained by the Tax Court, found for a fact that the expenses in the amount of ₱206,870.00 are fictitious. **<u>Tan Guan presented no evidence to disprove such finding. In appeals to the Court of Tax Appeals, the determination of the Commissioner of Internal Revenue is presumed correct and it behooves the taxpayer to rebut such presumption</u>** *(Perez vs. Court of Tax Appeals, eta/., L-10507,* May 30, 1958). **<u>Tan Guan failed to overcome his burden. Hence, the finding that the expenses are fictitious must be sustained. And being fictitious, the expenses cannot be claimed as</u>**

> **deduction from gross income.** ***(emphases and underlining all provided)***

17. Even as early as in the case of ***Collector of Internal Revenue vs. Bohol Land Transportation Co.*** **(G.R. Nos. L-13099 & L-13462, April 29, 1960),** the Honorable Supreme Court had the occasion to rule that:

> **'Since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessments for the years 1948, 1949 and 1950, the trial court had no other alternative than to resort to the legal truism that 'all presumptions are in favor of the correctness of tax assessments'**. The burden of proof is on the taxpayer to show the contrary. This the company failed to do. This action find support in the following authorities:
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> > **'All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed.** They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.
> >
> > **'As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it.'** (51 Am. Jur. pages 620-621).'*(Interprovincial Autobus* Co., *Inc. vs. Collector of Internal*

> *Revenue,* 98 Phil., 290; 52 Off. Gaz., [2] 791.)
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> 'When an importer challenges by legal steps the correctness of the assessment of a duty by the Collector of Customs, **the question to be decided is not whether the Collector was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own contention.'** *(Behn, Meyer* & Co. *vs. Collector of Customs,* 26 Phil., 647)
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> **'That the determination of the tax deficiency by the Government has *prima facie* validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct.'** *(Perez vs. Court of Tax Appeals, et* a/., G.R. No. L-10507, May 30, 1958)'***(emphases and underlining all provided)***

18. [PDMC] cannot question the assessments made against it for all presumptions are **in favor of tax assessments** *(Interprovincial Autobus* Co., *Inc. v. Collector* [98 Phil. 290]; *Cecilia Teodoro Dayrit v. Hon. Fernando Cruz and Commissioner* [L-39910, Sept. 26, 1988]; and *Bonifacio Sy Po vs. CTA* & *Commissioner,* [G.R. No. 81446, Aug. 18,1988]).

19. Thus, applying the pertinent provisions of the law, rules and jurisprudence in the matter at hand, it is crystal clear that the instant *Petition* lacks basis and merit, and should be dismissed outright by this Honorable Court/ Consequently, [PDMC] should already be made to pay the deficient taxes."

In the Notice of Pre-Trial Conference,[13] the pre-trial conference was set on August 9, 2013. Both PDMC's Pre-Trial Brief[14] and the CIR's Pre-Trial Brief[15] were filed on September 11, 2013.

[13] *Id.,* p. 153.
[14] *Id.,* pp. 162 to 172.

On September 30, 2013, the parties filed a Joint Motion to Approve Stipulation of Facts and Issues.[16] In the Resolution dated October 11, 2013,[17] the Court in Division directed the parties to submit a Supplemental Joint Stipulation of Facts and Issues indicating the names of their witnesses and the agreed trial dates. Thereafter, the parties filed their Supplemental Joint Stipulation of Facts and Issues on November 12, 2013.[18]

On November 19, 2013, the parties' Joint Motion to Approve Stipulation of Facts and Issues and their Supplemental Joint Stipulation of Facts and Issues were approved by the Court in Division.[19] Subsequently, the Court in Division issued the Pre-Trial Order on December 16, 2013.[20]

During trial, PDMC presented the following witnesses: Atty. Joseph John M. Literal, its Vice President and Legal Manager; Ms. Aprilee M. Mena, its Accounting Officer; and Ms. Brigitte D. Cañita, its Finance and Budget Manager.

PDMC filed its Formal Offer of Evidence on April 8, 2014.[21]

In the Resolution dated June 25, 2014,[22] the Court in Division admitted PDMC's Exhibits "P-49", "P-49-a", "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-8-a", "P-9", "P-10", "P-11", "P-14", "P-14-a", "P-15", "P-15-a", "P-16", "P-17", "P-19", "P-20", "P-21", "P-22", "P-23", "P-32", "P-32-a", "P-33", "P-34", "P-35", "P-36", "P-36-a", "P-37", "P-38", "P-39", "P-39-a", "P-40", "P-40-a", "P-50", "P-50-a", "P-41", "P-42", "P-42-a" to "P-42-c", "P-43", "P-43-a" to "P-43-b", "P-43-e" to "P-43-f", "P-44", "P-44-a","P-44-c" to "P-44-d", "P-45","P-45-a", "P-46", "P-47", "P-48", "P-51", "P-51-a" and "P-41-b", "P-42-b", "P-43-c", "P-43-d", "P-44-b" and "P-45-b". The Court, however, denied the admission of Exhibits "P-12", "P-13", "P-18", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", and "P-31" for failure of PDMC to submit the original documents for comparison.

On September 18, 2014, PDMC filed its Supplemental Formal Offer of Evidence.[23] In the Resolution dated November 5, 2014,[24] PDMC's Exhibits

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[15] *Id.*, pp. 457 to 459.
[16] *Id.*, pp. 544 to 548.
[17] *Id.*, pp. 557 to 558.
[18] *Id.*, pp. 559 to 566.
[19] *Id.*, pp. 574 to 575, Resolution dated November 19, 2013.
[20] *Id.*, pp. 577 to 584.
[21] *Id.*, pp. 636 to 659.
[22] *Id.*, pp. 932 to 933.
[23] *Id.*, pp. 948 to 951.
[24] *Id.*, pp. 969 to 970.

"P-52", "P-52-a", "P-52-b", "P-52-c", "P-53", "P-53-a", "P-53-b" and "P-53-c" were admitted into evidence.

On the other hand, the CIR presented as its lone witness, Revenue Officer Renan A. Plata.

The CIR filed his Formal Offer of Evidence on September 16, 2014.[25] The Court in Division admitted the CIR's Exhibits "R-1", "R-1-a", "R-2", "R-2-a", "R-2-b", "R-3", "R-3-a", "R-3-b", "R-3-c", "R-4", "R-4-a", "R-4-b", "R-5", "R-5-a", "R-5-b", "R-6", "R-6-a", "R-6-b", "R-7", "R-8", "R-8-a", "R-8-b", "R-9", "R-9-a", "R-9-b", "R-9-c", "R-10", "R-10-a", "R-10-b", "R-10-c","R-11", "R-11-a", "R-12", "R-12-a", "R-13", and "R-13-a" in the Resolution dated November 5, 2014. [24]

PDMC filed its Memorandum on December 10, 2014,[25] while the CIR failed to submit his Memorandum.[26] Thus, in the Resolution dated January 13, 2015, [27] the Court in Division deemed the case submitted for decision.

On January 22, 2016, the Court in Division promulgated the Assailed Decision, ruling as follows:

> "**WHEREFORE**, all the foregoing considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for taxable year 2007 covering deficiency EWT, WTC, income tax, VAT, and final withholding VAT are **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO PAY** the amount of **EIGHTY-ONE MILLION FIVE HUNDRED EIGHT THOUSAND FIVE HUNDRED SIXTY-NINE PESOS AND TWELVE CENTAVOS (₱81,508,569.12)**, representing basic deficiency EWT, WTC, income tax, VAT, and final withholding VAT, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Deficiency Tax	Basic Tax	25% Surcharge	Total
EWT	₱ 310,817.69	₱ 77,704.42	₱ 388,522.11
WTC	941,394.73	235,348.68	1,176,743.41
Income Tax	4,522,197.00	1,130,549.25	5,652,746.25
VAT	58,263,714.65	14,565,928.66	72,829,643.31
Final Withholding VAT	1,168,731.23	292,182.81	1,460,914.04
Total	**₱65,206,855.30**	**₱16,301,713.82**	**₱81,508,569.12**

[25] *Id.*, pp. 952 to 958.

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax, computed from April 15, 2008 until full payment thereof, pursuant to Section 249(8) of the NIRC of 1997;

(b) Delinquency interest at the rate of 20% *per annum* on the total amount of ₱81,508,569.12, and on the 20% deficiency interest which has accrued as stated in subparagraph (a) hereof, computed from October 1, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

As recounted in the earlier portion of this Decision, the parties timely filed their respective Motions for Reconsideration thereof.

On June 27, 2016, the Court in Division rendered the Assailed Resolution which ruled as follows:

> **"WHEREFORE,** the parties respective Motions for Reconsideration are hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**

Only PDMC appealed the Assailed Decision to the Court *En Banc*. After asking for an extension of time to file the Petition for Review[26] which was granted[27], PDMC posted its Petition for Review[28] via registered mail on August 1, 2016 which the Court received on August 10, 2016. The case was then docketed as CTA EB No. 1486.

In a Resolution dated September 1, 2016[29], the Court ordered the CIR to file his Comment to the Petition for Review.

The CIR failed to file his Comment[30].

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[26] *Rollo*, pp. 1-3, filed on July 15, 2016.
[27] *Id.*, pp. 4 and 4-a. PDMC was granted a final extension of until July 31, 2016 within which to file its Petition for Review.
[28] *Id.*, pp. 5-261, inclusive of Annexes "A" to "W".
[29] *Id.*, pp. 263-264.

In a Resolution dated October 21, 2016, the parties were ordered to submit their respective memoranda within thirty (30) days from receipt of the Resolution.[31]

After asking for an extension to file its Memorandum[32], which was granted[33], PDMC timely posted its Memorandum[34] via registered mail on December 19, 2016 which the Court received on December 23, 2016. The CIR failed to file his Memorandum.[35]

In a Resolution dated February 13, 2017, the case was submitted for decision.[36]

THE ASSIGNMENT OF ERRORS

PDMC, in its assignment of errors, raises three -- a) that the Court in Division erred in holding that PDMC's Site 2A property sold to MTS is an ordinary asset; b) that the Court in Division erred holding that PDMC was not deprived of due process; and c) that the Court in Division erred in failing to consider PDMC's Manifestation of its Application for Compromise.

THE RULING OF THE COURT

On this Court's Jurisdiction

On January 27, 2016, PDMC received a copy of the Assailed Decision partially granting its petition. PDMC timely filed its motion for partial reconsideration on February 11, 2016 questioning a portion of the Assailed Decision with regard only to the Site 2A property sold to MTS, its alleged deprivation of due process by the CIR, and its application and eventual payment of compromise.

The CIR likewise filed his motion for partial reconsideration of the Assailed Decision on February 5, 2016 praying that the same be set aside.

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[30] *Id.*, p. 265, Records Verification Report stating that the CIR failed to file Comment, dated October 7, 2016.
[31] *Id.*, pp. 267-268.
[32] *Id.*, pp. 269-271.
[33] *Id.*, pp. 274 and 274-a.
[34] *Id.*, pp. 275-297.
[35] *Id.*, p. 298, Records Verification Report stating that the CIR failed to file his Memorandum, dated January 5, 2017.
[36] *Id.*, pp. 300-301.

On July 1, 2016, PDMC received a copy of the First Division's Resolution dated June 27, 2016 denying the motions of both parties. Under Section 3(b), Rule 8 of the Revised Rules of the CTA (A.M. No. 05-11-07-CTA),[37] PDMC had fifteen (15) days from receipt of the said Resolution, or until July 16, 2016, within which to appeal to the Court *En Banc* by way of a petition for review.

PDMC filed a Motion for Extension of Time to File Petition for Review on July 15, 2016 requesting an additional fifteen (15) days or until July 31, 2016 within which to submit the Petition for Review. The Petition for Review was subsequently posted on August 1, 2016. Considering that July 31, 2016 fell on a Sunday, the Court considers the Petition timely filed.

The CIR likewise received a copy of the Assailed Decision on October 9, 2015 and also filed a timely motion for partial reconsideration on October 23, 2015.

Despite the timely filing of the Petition by PDMC, another consideration in determining whether or not this Court has jurisdiction is the recent doctrine pronounced by the Supreme Court in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*[38] (PSALM case). In that case, the Supreme Court decreed that "[u]nder Presidential Decree No. 242[39] (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."[40]

The pertinent sections of PD 242 are as follows:

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

[37] Dated November 22, 2005, and which took effect starting December 15, 2005.
[38] G.R. No. 198146, En Banc, August 8, 2017.
[39] PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES. Issued on 9 July 1973.
[40] *Id.* at Note 38.

> **hereinafter:** Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree.
>
> 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.**
>
> Section 3. Cases involving mixed questions of law and of fact or only factual issues *shall* be submitted to and settled or adjudicated by:
>
> (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;
>
> (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
>
> (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 provisions of PD 242 have also been 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.[41]

The holding in the *PSALM* case was justified on the grounds that: a) the President's constitutional power of control over all the executive departments, bureaus and offices under Section 17, Article VII of the Constitution must be

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[41] *Dr. Pandi v. Court of Appeals*, 430 Phil. 239 (2002). Republic Act No. 6682 amended the effectivity clause of EO 292, directing that "[T]his Code shall take effect two years after its publication in the Official Gazette."

upheld[42]; b) under the doctrine of exhaustion of administrative remedies, relief under PD 242 must be pursued first prior to seeking judicial recourse, otherwise, the action would be premature and the case not ripe for judicial determination[43]; and c) in harmonizing Section 4 of the NIRC of 1997 which delineates the powers of the CIR with PD 242, the NIRC of 1997 is a general law while PD 242 is a special law and, hence, must prevail over the former.[44]

The Supreme Court further discussed the rationale for vesting the Secretary of Justice with jurisdiction under PD 242, as follows:

> "The use of the word 'shall' in a statute connotes a mandatory order or an imperative obligation.[45] Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word 'shall' means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims 'solely' between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.
>
> The law is clear and covers ***'all disputes, claims and controversies solely*** **between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements.'** When the law says 'all disputes, claims and controversies solely' among government agencies, the law means ***all, without exception.*** Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.
>
> x x x x x x x x x
>
> PD 242 is only applicable to disputes, claims, and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National

[42] *Id.* at Note 38, pp. 12-13.
[43] *Id.* at 13-14.
[44] *Id.* at 15-17.
[45] *Id.*, citing *Abakada Guro Party List v. Hon. Exec. Sec. Ermita*, 506 Phil. 1 (2005); *Enriquez v. Enriquez*, 505 Phil. 193 (2005); *Province of Batangas v. Hon. Romulo*, 473 Phil. 806 (2004).

> 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.[46]"** *(Boldface and emphasis in the original)*

While the *PSALM* case vests the Secretary of Justice with jurisdiction over disputed tax assessments, it also has the necessary and, perhaps, unintended consequence of divesting this Court, the CTA, of its exclusive appellate jurisdiction over matters involving taxation if the controversy or dispute involves two government entities.

It is axiomatic that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action.[47] Jurisdiction cannot be conferred by consent or acquiescence of the parties[48] or by erroneous belief of the court, quasi-judicial office or government agency that it exists.

That being said, the Court of Tax Appeals is a court of special or limited jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[49] The jurisdiction of the CTA is conferred by Republic Act (RA) No. 1125[50], as amended by RA No. 9282[51]. The pertinent provision is quoted hereunder for ready reference:

> "SEC. 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

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[46] Under Section 66, Chapter 14, Book IV of the Administrative Code of 1987, which incorporated PD 242, not covered in the administrative settlement or adjudication are disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

[47] *Magno v. People*, 662 Phil. 726 (2011); Republic of the Philippines v. Sandiganbayan, 454 Phil. 504 (2003).

[48] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, 706 Phil. 442 (2013); Cojuangco. Jr. v. Republic of the Philippines, 699 Phil. 443 (2012).

[49] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010; *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717 (CTA Case No. 7876), April 17, 2012; *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, Resolution dated April 24, 2007.

[50] AN ACT CREATING THE COURT OF TAX APPEALS, June 16, 1954.

[51] AN ACT EXPANDING THE JURSIDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, effective April 23, 2004.

> assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue 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;**" (*Emphasis supplied*)

A study of both the *PSALM* case and the instant case show that due to their respective distinctive factual milieu, each has taken a different procedural path.

The *PSALM* case involved a dispute between PSALM and NPC, both GOCCs, and the BIR, a National Government office. The controversy arose when the BIR demanded payment of deficiency VAT from PSALM arising from the sale of two power plants. **While PSALM did pay the deficiency VAT pursuant to the Memorandum of Agreement that the parties involved signed**, PSALM also questioned whether or not the sale of the power plants were subject to VAT with the Department of Justice (DOJ). The DOJ ruled in favor of PSALM, declaring the deficiency VAT assessment null and void. The CIR questioned the jurisdiction of the DOJ via Petition for Certiorari with the Court of Appeals (CA). The CA then ruled that the DOJ committed grave abuse of discretion amounting to lack of jurisdiction in issuing the ruling. PSALM appealed to the Supreme Court which decreed that the DOJ indeed has jurisdiction, as discussed above.

The instant petition, on the other hand, involves PDMC, a GOCC, and the CIR, as head of the BIR, a government office. There was an assessment, first and foremost, which PDMC protested. However, as there was inaction on the part of the CIR, PDMC found recourse to this Court pursuant to the judicial remedy laid down for taxpayers in Section 7(a)(2) of RA 1125, as amended by RA 9282.

In both cases, the taxpayers involved pursued remedies made available to them by law, given their factual circumstances. In the *PSALM* case, there was no decision or inaction to speak of as the actions of the parties were governed by the Memorandum of Agreement. Hence, PSALM could not have appealed to the CTA, even if it wanted to, as the CTA would have no jurisdiction over the same. That is not the situation involved in the instant case wherein PDMC sought legal redress granted to them by law, specifically Section 7(a)(2) of RA 1125, as amended by RA 9282, a law not even remotely discussed in the *PSALM* case as focus therein was on Section 4 of the NIRC of 1997 which dealt with the powers of the Commissioner of Internal Revenue and **not** the exclusive appellate jurisdiction of the CTA.

Second, to apply the *PSALM* doctrine wholesale to all cases involving solely government entities before this Court would have adverse effects not only on the jurisdiction of the CTA, but also on the remedies available to the CIR. This has been discussed in the Dissenting Opinion of Justice Mariano C. Del Castillo in the *PSALM* case, thus:

> "It must be pointed out that to allow the Secretary of Justice to have jurisdiction over the instant case would not only **deprive the CTA of its exclusive appellate jurisdiction but would also deprive respondent CIR of any judicial remedy.** The Majority Opinion recommends that 'since the amount involved in this case is more than one million pesos, respondent CIR may appeal the DOJ Secretary's Decision to the Office of the President in accordance with Section 70, Chapter 14, Book IV of EO 292 and Section 5 of PD 242.' **However, if the appeal to the Office of the President were denied, respondent CIR would have no judicial recourse. Respondent CIR would not be able to appeal the decision of the Office of the President to the Court of Appeals (CA) under Rule 43 of the Rules of Court because the CA has no jurisdiction to review tax cases. Neither can respondent CIR file a Petition with the CTA because the CTA has no jurisdiction over decisions of the Office of the President or the Secretary of Justice**."

Third, the *PSALM* case discusses PD 242 vis-a-vis Section 4 of the NIRC of 1997 in order to decide upon the issue of whether or not the Secretary of Justice has jurisdiction in a case involving solely government entities. In its discussion, the Court came to the conclusion that the NIRC of 1997 is a general law dealing with matters involving taxation and PD 242, a special law, governing adjudication of controversies and disputes between government entities. Being a special law, its provisions are paramount to the provisions of the NIRC of 1997, and hence, must be followed.

However, in ascertaining whether or not this Court has jurisdiction in this particular case, **what ought to be weighed against PD 242 is not the NIRC of 1997, but RA 9282 which amended RA 1125**. RA 9282, expanded the jurisdiction of the CTA and elevated its rank to the level of a collegiate court **with special jurisdiction.**

The difference between a special law and a general law was also discussed in the *PSALM* case, citing *Vinzons-Chato v. Fortune Tobacco Corporation,* thus:[52]

> "A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only.
>
> A general law and a special law on the same subject are statutes in pari materia and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.
>
> The circumstance that the special law is passed before or after the general act does not change the principle. **Where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act;** and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed expressly or by necessary implication.[53]" *(Emphasis supplied)*

Using the above standards, it is apparent that **PD 242 is a general law** on the authority of the Secretary of Justice to settle and adjudicate **all** disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including GOCCs while **RA 9282 is a specific**

[52] 552 Phil. 101 (2007).
[53] Id.

law vesting exclusive appellate jurisdiction on the CTA in cases pertaining to disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC of 1997.

Furthermore, in the construction of these two statutes, it is of utmost importance to note the following. **PD 242** was issued on **July 9, 1973**. The **Administrative Code of 1997** which embodies the provisions of PD 242 took effect on **November 24, 1989.** On the other hand, **RA 9282** which expanded the jurisdiction of the CTA and elevated its rank to the level of a collegiate court with special jurisdiction took effect on **April 23, 2004.** Once again, using the standards laid down in the *Vinzons-Chato* case, **RA 9282, the special law that was passed later, must be regarded as an exception to or qualification of PD 242, the prior general law.**

In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle, embodied in the maxim, "*ut res magis valeat quam pereat*," that the courts should, if reasonably possible to do so without violence to the spirit and language of an act, so interpret the statute to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory.[54]

Every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation.[55] *Interpretare et concordare leges legibus, est optimum interpretandi modus,* which means that the best method of interpretation is that which makes laws consistent with other laws.[56]

It is to be noted that RA 9282, the special law that was passed later, had a repealing clause in Section 17 thereof which states:

> "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."

[54] *Asturias Sugar Central, Inc. vs. Commissioner of Customs*, G.R. No. L-19337, September 30, 1969, citing 50 Am. Jur. 358-359.
[55] *City of Naga vs. Agna*, G.R. No. 36049, May 31, 1976, 71 SCRA 176 (1976).
[56] *Gordon vs. Veridiano II*, 167 SCRA 51 (1988).

The questions at this juncture are whether or not Sec 7(a)(2) of RA 9282 can be harmonized with PD 242/Administrative Code of 1987 and to what extent, if any, should both prior laws be repealed, amended or modified, as the case may be.

On the one hand, Sec 7 of RA 9282 gives the CTA exclusive appellate jurisdiction over decisions or inaction of the CIR and other parties mentioned in the section regardless of who the parties are as long as they are taxpayers.

On the other hand, PD 242/Administrative Code of 1987 gives either the Solicitor General, the Government Corporate Counsel or the Secretary of Justice, as the case may be, jurisdiction over the administrative review of controversies between or among government offices, agencies and instrumentalities, including GOCCs regardless what the subject matter of the controversy is.

It has been said that if two or more laws on the same subject cannot possibly be reconciled or harmonized, one has to give way in favor of the other. There cannot be two conflicting laws on the same subject. Either 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.[57]

Assuming that the laws under discussion are all impossible to reconcile, then it would seem that PD 242 and the Administrative Code of 1987 have been repealed by RA 9282, considering that not only is it the later enactment, having taken effect on April 23, 2004, but it is also a special law that must prevail over the general one.

However, the Court need not go to that extent as the laws under discussion may be reconciled. Taking our cue from RA 9282, the later enactment, the Court deems PD 242 and the Administrative Code of 1987 modified to the extent that **when the controversy between or among government offices, agencies and instrumentalities, including GOCCs involve any of the matters listed in Section 7(a) thereof, then the CTA has exclusive appellate jurisdiction**. All other controversies between or among the aforementioned parties that do not involve taxation matters or interpretation of the provisions of the NIRC of 1997 may properly follow the procedure for administrative settlement or adjudication of disputes laid down in PD 242 and the Administrative Code of 1987.

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[57] *City of Naga v. Agna*, G.R. No. 36049, May 31, 1976, 71 SCRA 176 (1976); *Erana v. Vergel De Dios*, 85 Phil. 17 (1947)

Considering the foregoing discussion and the fact that the Petition was timely filed, this Court has jurisdiction over this case and will exercise it so.

The Site 2A Property is an Ordinary Asset

PDMC disputes the finding of Court in Division in the Assailed Decision that Site 2A Property is an ordinary asset and is, therefore, liable for 12% VAT. Instead, it claims that the properties sold to MTS was not in the course of trade or business as it was involuntary, pursued neither by reason of any commercial or economic activity nor in the exercise of a corporate purpose as real estate developer, but in obeisance to a long-standing Government plan to privatize all PNOC subsidiaries.

It further explained that as PDMC started out as an oil refinery in 1959 as Filoil Refinery (FRC). FRC was a separate entity back then from Filoil Industrial Estates (FIEI) which was involved in real estate business. Both companies merged in 1973 with FRC as the surviving company, until the amendment of its Articles of Incorporation in 1996 wherein it changed its name to Filoil Development and Management Corporation (FDMC). The company's primary purpose also became real estate development. It Articles of Incorporation were further amended on 2002 to change its name to its current one, PDMC.[58]

PDMC reasons that as it started out as an oil refinery, its assets, including the lands on hand should be classified as capital assets, especially since it was only in 1996 that its primary purpose became real estate development.

These arguments are not new. They have already been advocated by PDMC during trial and thoroughly considered by Court in Division in rendering the Assailed Decision. *We* find no reversible error in the finding of the Court in Division that the assessment of the CIR on this item should be upheld.

The records show that the CIR's investigation disclosed that PDMC's sales of real property to MTS in the amount of ₱336,913,020.20 was not subjected to VAT but treated as capital asset and subjected to final capital gains tax. The CIR cited BIR Ruling No. [DA-(C-130) 413-08] involving the same issue but concerning Sta. Elena Properties Inc., (SEPI) wherein it was held that since SEPI is a company engaged in the real estate business, all the real properties owned and acquired by SEPI were considered as ordinary

[58] *Id.*, pp. 11-12.

assets. This led to the CIR's assessment of deficiency VAT thereon pursuant to Section 108 of the NIRC of 1997, as amended.[59]

In finding the assessment in order, the Court in Division observed that PDMC's primary purpose as indicated in its Amended Articles of Incorporation[60] is *"to acquire by purchase, exchange, lease, donation, grant, foreclosure or otherwise, lands, interest in lands, real property and buildings of every class and description (hereinafter individually and collectively referred to as 'real estate'); and to own, hold, establish, provide, possess, rebuild, alter, improve, reforest, develop, utilize, manage, subdivide, sell, exchange, lease, mortgage, securitize and hold for investment or otherwise, real estate xxx."*

As real estate developer, petitioner is considered as a "taxpayer engaged in the real estate business" defined in Section 2(g) of RR No. 07-03 as follows:

> "g. **Taxpayers engaged in the real estate business** shall refer collectively to real estate dealers, real estate developers, and/or real estate lessors. Conversely, the term 'taxpayers not engaged in the real estate business' shall refer to persons other than real estate dealers, real estate developers and/or real estate lessors. A taxpayer whose primary purpose of engaging in business, or whose Articles of Incorporation states that its primary purpose is to engage in the real estate business shall be deemed to be engaged in the ·real estate business for purposes of these Regulations." *(Emphasis supplied)*

Furthermore, a study of Section 3 of RR No. 07-03 reveals that the Site 2A property sold by PDMC to MTS, subject of the assessment, is indeed considered an ordinary asset, thus:

> "SECTION 3. *Guidelines in Determining Whether* a *Particular Real Property* is a *Capital* Asset *or Ordinary* Asset. -
>
> a. *Taxpayers engaged in the real estate business.* - Real property shall be classified with respect to taxpayers engaged in the real estate business as follows:
>
> 1. *Real Estate Dealer.* - All real properties acquired by the real estate dealer shall be considered as ordinary assets.

[59] Exhibit "P-7", Docket, p. 697.
[60] Par. No. 3, Exhibit "P-8", p. 2, Docket, p. 702.

2. *Real Estate Developer.* - **All real properties acquired by the real estate developer, whether developed or undeveloped as of the time of acquisition,** and all real properties which are held by the real estate developer primarily for sale or for lease to customers in the ordinary course of his trade or business or which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year and all real properties used in the trade or business, whether in the form of land, building, or other improvements, **shall be considered as ordinary assets.**

3. *Real Estate Lessor.* -All real properties of the real estate lessor, whether land and/or improvements, which are for lease/rent or being offered for lease/rent, or otherwise for use or being used in the trade or business shall likewise be considered as ordinary assets.

xxx xxx xxx

e. ***Treatment of abandoned and idle real properties.*** - Real properties formerly forming part of the stock in trade of a taxpayer engaged in the real estate business, or formerly being used in the trade or business of a taxpayer engaged or not engaged in the real estate business, which were later on abandoned and became idle, **shall continue to be treated as ordinary assets.** Real property initially acquired by a taxpayer engaged in the real estate business **shall not result in its conversion into a capital asset even if the same is subsequently abandoned or becomes idle."** *(Emphasis supplied)*

Assuming arguendo that the sale of the Site 2A property to MTS was involuntary, as PDMC claims, this is also covered by Section 3(g) of RR No. 07-03, thus:

"***g. Treatment of real property subject of involuntary transfer.*** - In the case of involuntary transfers of real properties, including expropriation or foreclosure sale, the involuntariness of such sale shall have no effect on the classification of such real property in the hands of the involuntary seller, either as capital asset or ordinary asset, as the case may be.

> **For example, real properties forming part of the inventory of a real estate dealer, which are foreclosed, shall, for purposes of determining the applicable tax on such foreclosure sale, be treated as ordinary assets.** On the other hand, the nature of such real property in the hands of the foreclosure buyer shall be determined in accordance with the rules stated in sub-paragraph (f) hereof. *(Emphasis supplied)*

The Court in Division therefore concluded that since PDMC's sale of the Site 2A property to MTS was made in the ordinary course of its real estate business, the proceeds therefrom in the amount of ₱336,913,020.20 shall be subjected to 12% VAT pursuant to Sections 105 and 106(A) of the NIRC of 1997, as amended, which provide:

> "SEC. 105. Persons *Liable.* - Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> xxx xxx xxx
>
> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial an or economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity. xxx"
>
> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* -
>
> (A) *Rate and* Base *of Tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten *r* percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided,* That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied: xxx"

We find no persuasive reason to disturb this finding.

PDMC was Afforded Due Process of Law by the CIR

PDMC contends that Court in Division erred in finding that it was not deprived of due process of law, despite the following:

a) PDMC submitted documents consisting of vouchers to support its claim;

b) The box of vouchers was never opened, hence PDMC was not given the opportunity to explain its contents;

c) Since it was not opened and considered, the documents supporting PDMC's claim were never examined nor considered in the issuance of the FAN;

d) PDMC's request for an extension of time to send a representative in the informal conference, citing justifiable reason was unreasonably denied;

e) The Revenue Examiner assigned never examined the box of documents and even admitted that he had been on leave of absence last December 2011; and

f) There is no truth that PDMC failed to act within seven months, considering that the latest Notice of Informal Conference was dated June 29, 2012 or two months after the August 31, 2012 Assessment Notice was issued.

In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both the substantive and the procedural requirements thereof.[61] Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property.[62] As the validity of the particular tax laws involved in the subject assessment are not in question, it stands to reason that substantive due process is not being questioned. The other remaining aspect of due process, procedural

[61] *Alliance for the Family Foundation, Philippines, Inc. (ALFI) v. Hon. Janette L. Garin*, G.R. No. 217872, April 26, 2017, citing *Republic of the Phils. v. Sandiganbayan*, 461 Phil. 598 (2003).
[62] *Id.* citing *Ynot v. Intermediate Appellate Court*, No. L-74457, March 20, 1987, 148 SCRA 659.

due process, on the other hand, means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it.[63]

The Supreme Court has expounded on procedural due process as applied in administrative proceedings in the case of *Securities and Exchange Commission* vs. *Universal Rightfield Property Holdings, Inc.,*[64] thus:

> "The Court has consistently held that the essence of due process is simply an opportunity to be heard, or **as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.** Any seeming defect in its observance is cured by the filing of a motion for reconsideration, and denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on such motion. What the law prohibits is not the absence of previous notice, but the absolute absence thereof and the lack of opportunity to be heard." *(Emphases supplied)*

The Court in Division found that there was no *"absolute absence"* of notice to petitioner. By its own admission, PDMC stated that it had been given by the Bureau of Internal Revenue (BIR), a Notice of Informal Conference.[65] Furthermore, the record shows that, on September 28, 2012, PDMC filed with the BIR its Administrative Protest Letters, all dated September 25, 2012,[66] against each of the assessed deficiency taxes.[67]

In *Disciplinary Board, Land Transportation Office, et al. vs. Mercedita E. Gutierrez*[68], the Supreme Court pronounced:

> "'The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. 'To be heard' does not mean only verbal arguments in court; one may also be heard thru pleadings. **Where**

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[63] *Id.* citing *Tatad v. Sandiganbayan*, 242 Phil. 563, 575-576 (1988).
[64] G.R. No. 181381, July 20, 2015.
[65] See Pars. 14 to 16, Petitioner's Motion for Partial Reconsideration with Manifestation.
[66] Exhibits "P-39" and "P-40", Docket, pp. 882 to 885 and pp. 898 to 907.
[67] Par. 4, Stipulation of Facts, JSFI, Docket, p. 545.
[68] G.R. No. 224395, July 3, 2017.

> **opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.'"**

On this matter, *We* find no reversible error as well.

On the Application for Compromise Settlement

PDMC contends that the Court in Division erred in failing to consider its Manifestation of its Application for Compromise Settlement and seeks that the same not only be recognized and noted on the record, but also be taken into consideration and applied to its remaining tax liability.

PDMC claims that it filed for an Application for Compromise Settlement as early as July 30, 2014 and paid the amount of ₱28,176,394.94. However, it has also admitted in its Petition that its application has yet to be approved by the CIR.

On this matter, the Court in Division ruled as follows:

> "As for the supposed filing of application for compromise by petitioner and its alleged payment in the amount of ₱28,176,394.94 on July 30, 2014, this Court cannot take cognizance of the same. It is well-settled that courts cannot consider evidence which has not been formally offered.[69] Worthy of note is that the instant case was submitted for decision on January 13, 2015.[70] Thus, before this latter date, [PDMC] had ample time to introduce and offer the documents purporting to be the evidence showing that it paid the amount of ₱28,176,394.94 in connection with its application for compromise. Such being case and for failure to offer in evidence the subject documents, the said amount cannot have any bearing on the amounts be paid by [PDMC] as held in the assailed Decision."

We find PDMC's proposal to include its payment in support of its Application for Compromise in the computation of its remaining tax liability untenable and premature. Therefore, *We* uphold the finding of the Court in Division on this matter.

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[69] Dizon vs. Court of Tax Appeals, et al., G.R. No. 140944, April 30, 2008.
[70] Resolution dated January 13, 2015, Docket, p. 994.

On the Imposition of Deficiency Interest on the Deficiency EWT, WTC, VAT and Final Withholding VAT

In its Prayer, PDMC asks the Court *En Banc* to delete the imposition of deficiency interest and delinquency interest on the basic deficiency income tax.

The Assailed Decision held that deficiency interest under Section 249(B) should be applied only whenever there is a deficiency income tax, a deficiency estate tax, and a deficiency donor's tax. Accordingly, the deficiency interest imposed on the deficiency EWT, WTC, VAT, and Final Withholding VAT assessed against petitioner was cancelled.

Upon thorough consideration, *We* are convinced that deficiency interest must be imposed on deficiency EWT, WTC, VAT, and Final Withholding VAT as well.

Section 247 of the 1997 NIRC provides:

> **'TITLE X**
> **STATUTORY OFFENSES AND PENALTIES**
>
> **CHAPTER I**
> **ADDITIONS TO THE TAX**
>
> SECTION 247. General Provisions.-
>
> (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to **all taxes**, fees and charges **imposed in this Code**. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax." *(Emphasis and underscoring supplied)*

The text of Section 247(a) is clear. It states that the additions under Chapter I, Title X are applicable to ***all taxes imposed under the code***, *i.e.* the 1997 NIRC, regardless of the title under which they are classified. Therefore, the law does not limit these additions to only the three (3) types of internal revenue taxes, namely, income (Title II), estate (Title III) and donor's tax (Title III). Their imposition applies with equal force and effect to the other taxes under the 1997 NIRC such as the value-added tax (Title IV), other percentage taxes (Title V), excise tax (Title VI) and documentary stamp tax (Title VII).

Accordingly, the additions to the tax or deficiency tax such as, among others, *Civil Penalties or Surcharges* under Section 248, *Deficiency Interest* under Section 249(B), *Delinquency Interest* under Section 249(C), and *Installment on Extended Payment* under Section 249(D) are also applicable to PDMC's deficiency EWT, WTC, VAT, and Final Withholding VAT.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Assailed Decision is **MODIFIED** to read as follows:

> "**WHEREFORE**, all the foregoing considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for taxable year 2007 covering deficiency EWT, WTC, income tax, VAT, and final withholding VAT are **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO PAY** the amount of **EIGHTY-ONE MILLION FIVE HUNDRED EIGHT THOUSAND FIVE HUNDRED SIXTY-NINE PESOS AND TWELVE CENTAVOS (₱81,508,569.12)**, representing basic deficiency EWT, WTC, income tax, VAT, and final withholding VAT, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Deficiency Tax	Basic Tax	25% Surcharge	Total
EWT	₱ 310,817.69	₱ 77,704.42	₱ 388,522.11
WTC	941,394.73	235,348.68	1,176,743.41
Income Tax	4,522,197.00	1,130,549.25	5,652,746.25
VAT	58,263,714.65	14,565,928.66	72,829,643.31
Final Withholding VAT	1,168,731.23	292,182.81	1,460,914.04
Total	**₱65,206,855.30**	**₱16,301,713.82**	**₱81,508,569.12**

> In addition, petitioner is **ORDERED TO PAY**:
>
> (c) Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax, **EWT, WTC, VAT, and Final Withholding VAT** computed from April 15, 2008 until full payment thereof, pursuant to Section 249(8) of the NIRC of 1997;
>
> (d) Delinquency interest at the rate of 20% *per annum* on the total amount of ₱81,508,569.12, and on the 20% deficiency interest

which has accrued as stated in subparagraph (a) hereof, computed from October 1, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

See Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

The principle enunciated in PSALM v. CIR should be applied prospectively so as not to unjustly prejudice petitioner, who in good faith, relied on the doctrines prevailing at the time it filed the instant petition.
ESPERANZA R. FABON-VICTORINO
Associate Justice

With due respect, I join PJ's Dissent.
CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PNOC DEVELOPMENT AND MANAGEMENT CORPORATION, *Petitioner,*	**CTA EB No. 1486** (CTA Case No. 8649)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 19 2018 4:17 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I hesitate to give my assent to the *ponencia's* finding that the Court of Tax Appeals (CTA) retained its jurisdiction to resolve the present controversy notwithstanding the recent pronouncement of the Supreme Court *En Banc* in ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue[1] ("PSALM").***

In the assailed Decision of the Court in Division, I concurred in partially granting petitioner PNOC Development and Management Corporation's (PNOC) Petition for Review and affirming with some modifications the assessments issued by respondent Commissioner of Internal Revenue (CIR) against PNOC for taxable year 2007.

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

In assuming jurisdiction over PNOC's Petition for Review, the Court in Division relied on the then **prevailing jurisprudence** affirming the exclusive appellate jurisdiction of the CTA to review, among others, the decisions of the CIR in cases or matters referred in the National Internal Revenue Code (NIRC), albeit the same involve disputes or claims between or among government offices, agencies, bureaus, instrumentalities, including government-owned or controlled corporations (GOCCs).

In view, however, of the doctrine laid down in *PSALM*, it appears that this Court is bereft of jurisdiction to take cognizance of the present case as it involves a dispute solely between a GOCC and a government bureau.

Considering the implication of the pronouncement in *PSALM* to cases pending before the 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

[2] G.R. No. 86625, December 22, 1981.
[3] G.R. Nos. 109976 and 112800, April 26, 2005.

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)

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

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

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]

As *PNOC* 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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[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)

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

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

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

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

It is only proper that intra-governmental disputes be settled administratively since the **opposing government offices, agencies and instrumentalities are all under the 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**.

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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.**" (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 DOJ - - such interpretation must be respected by all courts.

The **referral of the present petition to the DOJ is the most appropriate action to take**. Applying the doctrine laid down in *PAGCOR* that when an office (as the DOJ) assumes jurisdiction over a case at the time when the rules vest jurisdiction upon it, yet, during the pendency of such action, a new doctrine divests the office of the jurisdiction it originally exercised, the proper and prudent course of action to take would be to refer the case to the appropriate body to which jurisdiction has been subsequently vested, *viz.*:

"Despite the shift in the construction of P.D. No. 242 in relation to R.A. No. 1125, the Secretary of Justice still resolved PAGCOR's petitions on the merits, stating that:

> "While this ruling (DBP) has been superseded by the ruling in *Philippine National Oil Company vs. CA*, **<u>in view of the prospective application of the PNOC ruling, we (the DOJ) are of the view that this Office can continue to assume jurisdiction</u>** over this case which was filed and has been pending with this Office since January 5, 2004 and rule on the merits of the case."

We **disagree** with the action of the Secretary of Justice.

PAGCOR filed its appeals in the DOJ on January 5, 2004 and <u>August 4, 2004.</u> *Philippine National Oil Company v. Court of Appeals* was promulgated on <u>April 26, 2006</u>. The Secretary of Justice resolved the petitions on <u>December 22, 2006</u>. Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country, and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals,* therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings.

Nonetheless, the **Secretary of Justice should not be taken to task for initially entertaining the petitions considering that the prevailing interpretation of the law on jurisdiction at the time of their filing was that he had jurisdiction. Neither should PAGCOR to blame in bringing its appeal to the DOJ on January 5, 2004 and August 4, 2004 because the prevailing rule then was the interpretation in *Development Bank of the Philippines v. Court of Appeals.*** The emergence of the later ruling was beyond PAGCOR's control. Accordingly, the lapse of the period within which to appeal the disputed assessments to the CTA

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could not be taken against PAGCOR." (Boldfacing and underscoring supplied)

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. [6] Any pronouncement made by the Supreme Court in its judicial decisions becomes the law of the land.[7] Adherence to the 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 **VOTE** to: (i) **DISMISS** the Petition for Review for lack of jurisdiction; (ii) **SET ASIDE** the assailed Decision and Resolution of the Court in Division; and, (iii) **REFER** CTA EB No. 1486 (CTA No. 8649) entitled *"PNOC Development and Management Corporation vs. Commissioner of Internal Revenue"* to the Department of Justice for adjudication.

ROMAN G. DEL ROSARIO
Presiding Justice

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

[7] 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.