REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BANGKO SENTRAL NG PILIPINAS, *Petitioner,*

-*versus*-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

CTA Case No. 10083

Members:

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

Promulgated:

FEB 11 2022 9:52 am

x- -x

DECISION

MANAHAN, *J.:*

This Petition for Review filed on May 22, 2019[1] by petitioner Bangko Sentral ng Pilipinas (BSP) prays that judgment be rendered ordering respondent Commissioner of Internal Revenue (CIR), to refund in favor of petitioner the amount of Php3,118,106.10 representing alleged overpayment of capital gains tax (CGT), inclusive of surcharge and interest.

THE PARTIES

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

[1] Court Docket, pp. 10-25.
[2] Petition for Review, paragraph 4.

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

THE FACTS

On February 3, 2016, petitioner and RD Realty Development Corporation executed a Deed of Absolute Sale involving the sale of a parcel of land located in General Santos City in the amount Php4,500,000.00.[3]

Petitioner allegedly paid CGT on the aforesaid transaction in the amount of Php1,620,000.00.[4]

Sometime in May of 2017, the BIR issued an assessment requiring petitioner to pay the amount of Php6,886,006.10 representing deficiency CGT with surcharge, interest and compromise penalty.

On May 23, 2017, petitioner paid the assessed amount of Php6,886,006.10 under protest.[5]

On November 7, 2018, petitioner filed with the BIR-Large Taxpayers Service (LTS), an administrative claim for refund[6] arguing that the fair market value of the property is not Php10,650.00 per square meter but the lower amount of Php7,500.00 per square meter considering that the subject property falls under the classification "Industrial-Interior Lots."

Due to the alleged inaction of respondent on its claim for refund of CGT, petitioner filed a Petition for Review with this Court on May 22, 2019.

---

[3] Exhibit "P-12" with submarkings.
[4] Exhibit "P-13" with sub-markings.
[5] Exhibit "P-5" with sub-markings.
[6] Exhibit "P-8" with sub-markings.

Respondent filed his *Answer* to the Petition for Review on September 12, 2019. [7]

The Pre-Trial Conference was set and held on November 21, 2019.[8] Prior thereto, petitioner's Pre-Trial Brief was filed on November 15, 2019[9] while respondent's Pre-Trial Brief was likewise filed on November 15, 2019.[10]

On September 17, 2019, respondent transmitted the BIR Records for this case, consisting of one (1) folder, pre-numbered from pages 1 to 57.[11]

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

On January 31, a Pre-Trial Order was issued,[13] reiterating, *inter alia*, the facts and issue stipulated in the said JSFI, and deeming the termination of the Pre-Trial Conference.

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Walter S. Garcia, and (2) Ms. Maria Cecilia J. Laforteza.

Petitioner filed its Formal Offer of Evidence on October 16, 2020.[14] Respondent filed his Comment (on Petitioner's Formal Offer of Evidence) on October 23, 2020.[15]

In the Resolution dated November 18, 2020,[16] the Court admitted all of petitioner's exhibits, subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issue involved in this case.

In this same Resolution, the Court noted that respondent, in his Comment (on Petitioner's Formal Offer of Evidence) made

---

[7] Court Docket, pp. 83-90.
[8] *Notice of Pre-trial Conference* dated September 24, 2019, Court Docket, pp. 100 101.
[9] Court Docket – pp.183-197..
[10] Court Docket – pp.198-200.
[11] Minute Resolution dated September 24, 2019.
[12] Court Docket – pp. 214 to 219.
[13] Court Docket, pp. 225-231.
[14] Court Docket – pp. 257-266.
[15] Court Docket, pp. 271-272.
[16] Court Docket, pp. 276-277.

am

no manifestation that he will be presenting any evidence, hence his right to present evidence is deemed waived.

On December 28, 2020, respondent filed his *Memorandum*,[17] while petitioner, filed its Memorandum on January 13, 2021.[18]

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

THE ISSUE

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

> "Whether the BSP is entitled to a refund of the alleged erroneously paid CGT, surcharge, and interest in the amount of Three Million One Hundred Eighteen Thousand One Hundred Six and Ten Centavos (Php3,118,106.10)." [20]

Petitioner's arguments:

Petitioner alleges that respondent used an incorrect zonal value in determining the basis of the CGT on the sale of the parcel of land located in General Santos City. It asserts that the correct value per square meter of said lot is actually Php7,500.00 per square meter because the subject property falls under the classification "Industrial-Interior Lots." Instead, petitioner claims that respondent used the classification "Industrial-Along the Road", and applied the zonal value of Php10,650.00 per square meter as basis of the CGT assessment.

Petitioner asserts that if respondent used the correct basis of Php7,500.00 per square meter, the additional assessment should not have been Php6,886,006.10 but should only be Php3,767,900.00. Accordingly, petitioner maintains that it is entitled to claim a refund of Php3,118,106.10.

---

[17] Court Docket – pp. 278 – 287.
[18] Court Docket, pp. 289-307.
[19] Court Docket – page 313.
[20] Court Docket, Joint Stipulation of Facts and Issues (JSFI), pp. 214-219.

Respondent's counter-arguments:

Respondent contends that petitioner's claim for refund cannot be granted for failure of petitioner to exhaust administrative remedies before elevating an appeal with the Court. Respondent alleges that when petitioner filed its Petition for Review with the Court, its administrative claim for refund was still undergoing investigation and examination by his office to determine the veracity of said claim. Respondent further argued that if petitioner did not agree with the zonal valuation used as basis for the CGT assessment, it should have elevated the matter to the Technical Committee on Real Property Valuation (TCRPV) pursuant to Revenue Memorandum Circular (RMC) No. 27-2010 and Department Order No. 6-2010 dated March 12, 2010, which it did not.

As to the allegation that the BIR used the wrong basis for the CGT assessment, respondent submits that it is the BIR who is an expert on the matter of determining the basis of the amount of CGT to be paid and states that it is based on the Fair Market Value (FMV)or zonal value, whichever is higher and in this case, the FMV was the higher value and was thereby used as the basis of the CGT assessment.

THE COURT'S RULING

Before going into the merits of the arguments of both parties, it is imperative that we determine first the Court's jurisdiction over the Petition for Review filed by petitioner BSP. It is well-settled that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action as any act it performs without jurisdiction is null and void.[21] In the case of *Mitsubishi Motors Philippines Corp. vs. Bureau of Customs,*[22] the Supreme Court emphasized the primacy of the issue of jurisdiction over all other issues and we quote:

> "Jurisdiction is defined as the power and authority of a court to hear, try and decide a case. **In order for the court or**

---

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

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

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

Section 1 of Presidential Decree (P.D.) No. 242 entitled "*Prescribing the Procedure for Administrative Settlement or Adjudication of Disputes, Claims and Controversies Between or Among Government Offices, Agencies and Instrumentalities, Including Government-Owned or Controlled Corporations, and for Other Purposes*" and now embodied in the Administrative Code of 1987, provides as follows:

> "Section 1. Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree."

In interpreting the foregoing provision of P.D. No. 242, the Supreme Court in the case of *Power Sector Assets and Liabilities Management Corporation vs. CIR (PSALM* case*)* [23] clearly ruled that the administrative procedure provided therein should be followed in disputes and claims solely between government agencies and offices, including government-owned and controlled corporations, and we quote:

> "This case involves a dispute between PSALM and NPC [National Power Corporation], **which are both wholly**

---

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

> **government-owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants.** There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, **it is the Secretary of Justice who has jurisdiction. xxx** xxx xxx
>
> xxx xxx xxx
>
> The use of the word "shall" in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word "shall" means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims **"solely"** between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.
>
> The law is clear and covers ***"all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements."** When the law says "all disputes, claims and controversies solely" among

government agencies, the law means **all, without exception**. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

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

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

xxx xxx xxx

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

cm

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

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

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. PD 242 is a special law while the 1997 NIRC is a general law, insofar as disputes solely between or among government agencies are concerned. Necessarily, such disputes must be resolved under PD 242 and not under the NIRC, precisely because PD 242 specifically mandates the settlement of such disputes in accordance with PD 242. PD 242 is a valid law prescribing the procedure for administrative settlement or adjudication of disputes among government offices, agencies, and instrumentalities under the executive control and supervision of the President.

xxx xxx xxx

PD 242 is now embodied in Chapter 14, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987, which took effect on 24 November 1989." (emphases supplied)

on

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

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

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

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

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

> Executive Order No. 292
>
> Section 2. General Terms Defined. xxx. xxx.
>
> (10) "**Instrumentality**" refers to any agency of the National Government, not integrated within the department framework vested within special functions or jurisdiction by law, **endowed**

am

> **with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.** (emphasis supplied)
>
> xxx xxx xxx
>
> (13) **Government -owned or controlled corporation**" refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations."

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

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

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

Marian Ivy F. Reyes-Fajardo
(With Separate Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice