Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

PHILIPPINE MINING DEVELOPMENT CORPORATION, Petitioner,	**CTA EB NO. 1900** (CTA Case No. 9292)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE AND THE OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE, IN THEIR OFFICIAL CAPACITIES AS OFFICERS OF THE BUREAU OF INTERNAL REVENUE, Respondents.	Promulgated: OCT 16 2019 11:45a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2] in

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for

the case entitled "Philippine Mining Development vs. The Commissioner of Internal Revenue and the OIC-Assistant Commissioner, Large Taxpayer Service, in their official capacities as officers of the Bureau of Internal Revenue", docketed as CTA Case No. 9292, dated April 6, 2018, rendered by the Second Division of this Court, and its Resolution[3] dated July 5, 2018.

The Second Division of this Court dismissed petitioner's petition for review for lack of jurisdiction by applying the case of *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*[4] (*PSALM Case*), where the Supreme Court ruled that administrative procedures pursuant to Section 2 and 3 of Presidential Decree (PD) NO. 242 should be followed in resolving disputes solely between government agencies and offices, including government owned or controlled corporations. Petitioner's motion for reconsideration thereon was denied.

Petitioner assails both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated April 6, 2018:

> "***WHEREFORE***, *the instant Petition for Review is hereby* ***DISMISSED*** *for lack of jurisdiction.*
>
> *Let a copy of this Decision be furnished to the Secretary of Justice.*
>
> ***SO ORDERED.***"

Resolution July 5, 2018:

> "***WHEREFORE***, *the instant Motion for Reconsideration is* ***DENIED*** *for lack of merit.*

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review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En Banc Docket, pp. 29-41.
[3] En Banc Docket, pp. 63-68.
[4] G.R. No. 198146, August 8, 2017.

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SO ORDERED."

The antecedent facts as narrated by the Court in Division in its Decision read as follows:

"Petitioner Philippine Mining Development Corporation (PMDC) is a government-owned and controlled corporation (GOCC), with business address at 2904 B, West Tower, Phil. Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City.

Respondents Commissioner of Internal Revenue (CIR) and OIC-Assistant Commissioner, Large Taxpayers Service are impleaded in their official capacities as the Head of the BIR, respectively. Respondents are authorized and tasked under existing laws and their implementing rules and regulations to perform the duties of their respective offices, including among others, the power to act upon protests on assessments or on disputed assessments issued by its office or through its authorized representative.

PMDC, formerly Natural Resources Mining Development Corporation, was incorporated on July 4, 2003 primarily to conduct and carry on the business of exploring, developing, mining, concentrating, converting, smelting, treating and otherwise developing, producing and dealing in gold, silver, copper, iron and any and all kinds of minerals, mineral deposits, substances and mineral resource.

In the April 23, 2008 Letter of then BIR Commissioner Lilian B. Hefti, PMDC was informed that it is considered as a large taxpayer and under the jurisdiction of Revenue District Office (RDO) 121.

On September 26, 2008, PMDC filed its Application for Registration Information Update (BIR Form no. 1905) to change its registered address from 5/F PNOC-EDC Bldg. 5, Merrit Road, Fort Bonifacio, Makati City to 2904B PSE Centre, West Tower, Exchange Road, Pasig City.

On January 4, 2010, PMDC received the September 18, 2009 Preliminary Assessment Notice (PAN) relative to the alleged deficiencies in VAT and income tax for taxable year 2006. Said PAN was still addressed to PMDC's old address.

The BIR issued a Final Assessment Notice (FAN) dated January 22, 2010 on the alleged deficiency VAT and IT.

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The basic deficiency VAT amounted to Php 1,356,588.37, while the basic deficiency income tax amounted to Php 3,956,716.07 which, when totaled with the surcharge and interest amounted to Php 11,048,658.60. Said FAN was also addressed to PMDC's old address.

On February 8, 2010, through a letter addressed to Mr. Nelson M. Aspe, Deputy Commissioner - Operations Group, PMDC requested that it be provided a copy of the BIR's matching/ reconciliation data sheet so that PMDC can verify the claim for VAT deficiency.

On November 22, 2010, PMDC received the October 27, 2010 Preliminary Collection Letter (PCL) issued by Revenue District Office No. (RDO) 50, Revenue Region 8, for the alleged tax deficiency. On November 26, 2010, PMDC allegedly received the FAN, as stated in its December 1, 2010 letter to Revenue Region 8 Regional Director Mr. Jaime Santiago. In the said letter, PMDC reiterated its change of address, and that details of the assessment have not yet been provided by the LN Task Force.

On May 26, 2011, PMDC received the April 27, 2011 PCL issued by the LT -Collection and Enforcement Division, again demanding payment of the alleged tax deficiencies totaling Php 11,048,658.60. PMDC replied to this PCL through its Letter dated June 2, 2011 where it reiterated that PMDC has incurred a net loss as shown in its Annual Audit Report for calendar year 2006; that it requests for reinvestigation of the BIR findings on its alleged deficiency income tax; and, that it is willing to pay the VAT deficiency of Php 2,193,151.20 with an additional request to waive the surcharge amounting to Php 678,294.00. On June 13, 2011, PMDC paid deficiency VAT amounting to Php 2,193,151.20. On October 9, 2014, PMDC paid the surcharge amounting to Php 678,294.19.

On June 10, 2011, PMDC received the Final Notice Before Seizure dated May 24, 2011. On July 7, 2011, PMDC wrote its reply to the Final Notice Before Seizure seeking the removal of the deficiency income tax assessment considering that it has no unreported revenues for year 2006.

On July 25, 2011, PMDC received the July 13, 2011 Letter from the Assistant Commissioner, Large Taxpayers Service, where the BIR informed PMDC of the alleged basis of the computation of the tax deficiencies.

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On August 27,2011, the BIR issued a Warrant of Distraint and Levy (WDL). On March 22, 2012, the BIR denied PMDC's request for suspension of the implementation of the WDL stating that PMDC failed to file its protest and that the assessment has become final and executory.

On April 30, 2012, PMDC paid 40% of the basic assessed tax amounting to Php1,582,686.43. On May 3, 2012, PMDC filed its Application for Compromise on the ground of doubtful validity of the assessment. On February 11, 2016, PMDC received the Notice of Denial dated January 28, 2016, informing it of the National Evaluation Board (NEB) disapproval of its application for compromise.

Hence, PMDC filed the subject Petition for Review on March 14, 2016.

The CIR filed his Answer on April 12, 2016, and his Pre- Trial Brief on April 25, 2016. PMDC filed its Pre-Trial Brief on May 6, 2016. The parties filed their Joint Stipulation of Facts and Issues (JSFI) on May 31, 2016, which the Court approved and adopted in the Pre-Trial Order dated July 27, 2016.

During trial, PMDC presented its lone witness Ms. Mary Ann P. Zarcilla. PMDC filed its Formal Offer of Evidence (FOE) on September 5, 2016, which the Court resolved on October 20, 2016, thereby admitting all of petitioner's evidence.

After several resettings, respondents presented their witness, Revenue Officer Joriz Saldajeno on February 15, 2017. On August 30, 2017, respondents' counsel manifested that there were no other witnesses to be presented. Respondents orally offered their evidence on even date, which the Court resolved thereby admitting respondents' evidence. The parties were granted a period of thirty (30) days within which to submit their respective memoranda.

PMDC filed its Memorandum on September 29, 2017, while respondents filed their Memorandum on October 19, 2017, within the extended period granted. Considering the foregoing, the case was deemed submitted for decision on October 26, 2017."

On April 6, 2018, the Second Division of this Court rendered the Decision which dismissed petitioner's Petition

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for Review on jurisdictional ground and on July 5, 2018, denied petitioner's motion for reconsideration.

Hence, this Petition for Review was filed.

The sole issue raised by petitioner is:

> **"WHETHER THE CTA SECOND DIVISION ERRED IN RULING THAT THE CTA HAS NO JURISDICTION OVER THE CASE"**

Petitioner submits that the Second Division of this Court has jurisdiction over the case and that the case should not be dismissed. Petitioner maintains that the controversy involves decision of respondent CIR over disputed assessment and the Court of Tax Appeals has exclusive appellate jurisdiction to review by appeal the decision of respondent CIR over disputed assessment.

Petitioner asserts that the case of Commissioner of Internal Revenue vs. Secretary of Justice and PAGCOR[5] squarely applies in this case. Petitioner argues that reversal of interpretations cannot be given retroactive effect to the prejudice of parties who may have relied on the first interpretation. Furthermore, petitioner claims that the Court in Division can still entertain this case since the same was filed prior to the promulgation of the *PSALM Case*.

We resolve.

The relevant provisions of law pertaining to dispute between and among departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies in relation to the jurisdiction of this Court are PD 242[6] as embodied in Executive Order No. 292 (EO 292), otherwise known as the "Administrative Code of 1987", which took effect on

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[5] G.R. 177387, NOVEMBER 9, 2016.
[6] 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

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November 24, 1989, specifically, in Chapter 14 "Controversies Among Government Offices and Corporations" of Book IV, entitled "Executive Branch", to wit:

"CHAPTER 14

Controversies Among Government Offices and Corporations

> ***SECTION 66.*** *How Settled.—All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.*
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> ***SECTION 67.*** *Disputes Involving Questions of Law.—All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as ex officio legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.*
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> ***SECTION 68.*** *Disputes Involving Questions of Fact and Law.—Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:*
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> *(1) The Solicitor General, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and*
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> *(2) The Secretary of Justice, in all other cases not falling under paragraph (1).*
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> ***SECTION 69.*** *Arbitration.—The determination of factual issues may be referred to an arbitration panel composed of one representative each of the parties involved and presided over by a representative of the Secretary of Justice or the Solicitor General, as the case may be.*

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> ***SECTION 70.*** *Appeals.—The decision of the Secretary of Justice as well as that of the Solicitor General, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may, however, be taken to the President where the amount of the claim or the value of the property exceeds one million pesos. The decision of the President shall be final."*

Evidently, those controversies among government offices and corporations under the executive branch pertain to those offices that are under the executive control and supervision of the President of the Philippines.

On the other hand, pursuant to Section 4 of the National Internal Revenue Code (NIRC) of 1997, the Commissioner of Internal Revenue (CIR) has the power to interpret tax laws and to decide tax cases, to wit:

> *SEC 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.*
> ***The power to decide*** *disputed assessments,* ***refunds in internal revenue taxes, fees or other charges,*** *penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue* ***is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.*** *(Emphasis supplied)*

Evidently, CIR's power to decide on claim for refunds of internal revenue taxes is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Pursuant to Section 7 (a) (2)[7]of Republic Act No. 1125[8] (RA 1125) as amended by Republic Act No. 9282[9] (RA

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[7] 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;

[8] An Act Creating the Court of Tax Appeals.

[9] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL

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9282), in relation to Rule 4 Section 3 (a)(2), the Court in Division shall exercise appellate jurisdiction over inaction of the CIR in cases involving refunds of internal revenue taxes fees or other charges, to wit:

> ***SEC. 3.*** *Cases within the jurisdiction of the Court in Divisions. - The Court in Divisions shall exercise:*
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> *(a) Exclusive original or appellate jurisdiction to review by appeal the following:*
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> *xxxxx*
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> *(2)* ***Inaction by the Commissioner of Internal Revenue in cases involving*** *disputed assessments,* ***refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code*** *or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and* ***Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;*** *(Emphasis supplied)*

It is a settled jurisprudence that jurisdiction over the subject matter is fundamental for a court to act on a given

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JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES

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controversy. It is conferred by law, not by consent of the parties. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings. [10]

PD 242 promulgated on July 9, 1973, prescribes the procedures in settling administratively the disputes between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. As provided in its whereas clauses: (1) there is but one real party in interest the Government itself in such litigations; (2) the dispute contributed to the clogged dockets of the courts, aside from dissipating or wasting the time and energies not only of the courts but also of the government lawyers and the considerable expenses incurred in the filing and prosecution of judicial actions, (3) all the aforementioned offices, agencies, and instrumentalities are under the executive control and supervision of the President of the Philippines.

PD 242 was embodied in Executive Order No. 292 (EO 292), otherwise known as the "Administrative Code of 1987", which took effect on November 24, 1989, specifically, in Chapter 14 "Controversies Among Government Offices and Corporations" of Book IV, entitled "Executive Branch". Clearly, those controversies among government offices and corporations under the executive branch pertain to those offices that are under the executive control and supervision of the President of the Philippines.

Pursuant to the Administrative Code, the Secretary of Justice or the Solicitor General, shall have jurisdiction to administratively settle or adjudicate all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations which are under the executive control and supervision of the President of the Philippines, depending on the issues and government agencies involved. The purpose is clearly to provide for a speedy and efficient administrative settlement or adjudication of disputes between government offices or

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[10] Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals, G. R. No. L-23988, January 2, 1968.

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agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts.[11]

On the other hand, pursuant to Section 4[12] of the National Internal Revenue Code (NIRC) of 1997, the Commissioner of Internal Revenue (CIR) has the power to interpret tax laws and to decide tax cases. Evidently, CIR's power to decide on claim for refunds of internal revenue taxes is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals pursuant to Republic Act No. 1125[13] (RA 1125) as amended by Republic Act No. 9282[14] (RA 9282).

Conflict arises if government agencies and offices, including government-owned or controlled corporations, which are under the executive control and supervision of the President, dispute the assessment made by the CIR.

As between RA 1125 and PD 242, in the case of *Development Bank of the Philippines v. Court of Appeals, et al.*,[15] the Supreme had ruled that PD 242 prevail over RA 1125, to wit:

> *"The Court ... expresses its entire agreement 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.*

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[11] Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue, G.R. No. 198146, August 8, 2017.

[12] *SEC 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.*

The power to decide *disputed assessments,* ***refunds in internal revenue taxes, fees or other charges,*** *penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue* ***is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals****. (Emphasis supplied)*

[13] An Act Creating the Court of Tax Appeals.

[14] AN ACT EXPANDING THE JURISDICTION 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES

[15] G.R. No. 86625, December 22,1989,

> *No. 242), being the latest expression of the legislative will, should prevail over the earlier."*

However, in the consolidated case of *Philippine National Oil Company vs. The Hon. Court of Appeals, The Commissioner of Internal Revenue and Tirso Savellano*[16] *and Philippine National Bank vs. The Hon. Court of Appeals, Court of Tax Appeals, Tirso B. Savellano and Commissioner of Internal Revenue*[17] (herein referred as *PNOC Case*), the Supreme Court ruled that 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., to wit:

> *"After re-examining the provisions on jurisdiction of Rep. Act No. 1125 and P.D. No. 242, this Court finds itself in disagreement with the pronouncement made in Development Bank of the Philippines v. Court of Appeals, et al., and refers to the earlier case of Lichauco & Company, Inc. v. Apostol, et al.,xxx.*
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> *xxx xxx xxx.*
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> *Sustained herein is the contention of private respondent Savellano that P.D. No. 242 is a general law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies. It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines. On the other hand, Rep. Act No. 1125 is a special law dealing with a specific subject matter - the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein.*

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[16] G.R. No. 109976, April 26, 2005.
[17] G.R. No. 112800, April 26, 2005.

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> *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."*

Thereafter, in the case of Commissioner of Internal Revenue vs. Secretary of Justice, and Philippine Amusement and Gaming Corporation[18] (*PAGCOR Case*), the Supreme Court reiterated the *PNOC Case* and ruled that the **Secretary of Justice has no jurisdiction to review disputed assessments.**

However, in the *PSALM Case*[19], the Supreme Court *En Banc* harmonized PD 242 and Section 204 of the NIRC of 1997, to wit:

> *"The first paragraph of Section 4 of the 1997 NIRC provides that the power of the CIR to interpret the NIRC provisions and other tax laws is* ***subject to review by the Secretary of Finance, who is the alter ego of the President.*** *Thus, the constitutional power of control of the President over all the executive departments, bureaus, and offices is still preserved. The President's power of control, which cannot be limited or withdrawn by Congress, means the power of the President to alter, modify, nullify, or set aside the judgment or action of a subordinate in the performance of his duties.*
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> *The second paragraph of Section 4 of the 1997 NIRC, providing for the exclusive appellate jurisdiction of the CTA as regards the CIR's 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,*

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[18] G.R. No. 177387, November 9, 2016.
[19] Supra Note 4.

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> *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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> *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."*

From the foregoing, the Supreme Court ruled that if the disputing parties are all public entities (covers disputes between the BIR and other government entities), the case shall be governed by PD 242. Thus, a dispute regarding an assessment made by the CIR with the government agencies and offices, including government-owned or controlled corporations, which are under the executive control and supervision of the President, shall be governed by PD 242 as embodied in Chapter 14, Book IV of EO 292.

In the case at hand, petitioner, a government owned and controlled corporation disputes the assessment made by the Commissioner of Internal Revenue of the Bureau of Internal Revenue, an agency of the National Government. Both offices are under the executive branch and under the executive control and supervision of the President of the Philippines.

In Angara v. Electoral Commission[20], the Supreme Court explained the principle of separation of powers, as follows:

> *"The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive*

[20] 63 Phil. 139 (1936)

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cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. x x x And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.

The concept of the independence of the three branches of government, on the other hand, extends from the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry. To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates; lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others."

Petitioner and respondents are under the executive control and supervision of the President of the Philippines, there is but one real party in interest, the Government itself in this case, thus, the mechanism in settling controversies between and among government offices and corporations, should be respected. In addition, such dispute contributed to the clogged dockets of the courts, dissipating or wasting the time and energies not only of the courts but also of the government lawyers.

Under the doctrine of *stare decisis,* this Court is *required* to adhere to the ruling of the Supreme 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.

Concomitantly, We find that the Court in Division was correct when it ruled as follows:

> *"Since the Supreme Court has reconciled and interpreted the provisions of PD No. 242 and Republic Act (RA) No. 1125, as amended, and declared in the PSALM case, 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.*** *Unless and until modified by the Supreme Court En Banc, the interpretation of PD No. 242 in the PSALM case 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.*
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> *In the instant case, petitioner Philippine Mining Development Corporation is a GOCC, while respondent CIR represents the Bureau of Internal Revenue, another government agency. Clearly, this is a dispute solely between two government entities, and as such, following the ruling in the PSALM case, this Court has no jurisdiction.*
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> *While it is true that the instant petition was filed on March 4, 2016, or before the promulgation of the PSALM case on August 8, 2017, this Court cannot insist on exercising jurisdiction over it. This was squarely addressed by the Supreme Court in Commissioner of Internal Revenue v. Secretary of Justice and Philippine Amusement and Gaming Corporation (PAGCOR case), as follows:*
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> > *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:*
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> > > *While this ruling (DBP) has been superseded by the ruling in Philippine National Oil Company vs. CA, 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 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.*

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We disagree with the action of the Secretary of Justice.

PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004. Philippine National Oil Company v. Court of Appeals was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on 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</u>. Therein lay the grave abuse of discretion amounting to lack or excess o 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. (Underscoring supplied, citations omitted)

Applying the doctrine laid down in the PAGCOR case, 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. Thus, this Court, having had ample opportunity to abide by the ruling in the PSALM case, has no jurisdiction over the instant petition filed by PMDC."

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by jurisprudence and evidence on record.

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WHEREFORE, premises considered, the Petition for Review docketed as CTA EB No. 1900 is **DENIED** for lack of merit. Accordingly, the Decision dated April 6, 2018, rendered by the Second Division of this Court in CTA Case No. 9292, and its Resolution dated July 5, 2018 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice