REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, *Petitioner,*	**CTA Case No. 9235**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 2 8 2018 4:00 p.m.

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DECISION

MANAHAN, *J.:*

This case involves the *Petition for Review*[1] filed by Power Sector Assets and Liabilities Management Corporation on January 11, 2016, seeking the cancellation and withdrawal of the Final Decision on Disputed Assessment (FDDA) dated December 10, 2015 issued by the Commissioner of Internal Revenue that found petitioner liable for deficiency expanded withholding tax and final value-added tax, inclusive of compromise penalty, in the aggregate amount of ₱3,311,074,175.51 for taxable year 2009.

THE PARTIES

Petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) is a government-owned and controlled corporation (GOCC) created under Section 49 of Republic Act (RA) No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA), which is mandated to "take ownership of all existing National Power Corporation (NPC) generation assets, liabilities, Independent Power Producer (IPP) contracts, real estate and all other disposable assets" and has the purpose and objective under Section 50 of the EPIRA to "manage the orderly sale,

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[1] Docket, CTA Case No. 9235, Vol. I, pp. 10-21.

disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner." Petitioner's principal office is at the 7th Floor, Bankmer Building, 6756 Ayala Avenue, Makati City.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to rule on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

On December 12, 2012, petitioner received from respondent a Preliminary Assessment Notice (PAN), with attached Details of Discrepancies[3] dated December 12, 2012, assessing petitioner for alleged deficiency withholding tax on compensation (WTC), expanded withholding tax (EWT), final tax, and final value-added tax (VAT) in the total amount of ₱2,852,762,281.15 for taxable year 2009.

Petitioner filed its response to the PAN on December 27, 2012.[4]

Petitioner then received from respondent a Formal Letter of Demand (FLD)[5], with attached Details of Discrepancies, and a Formal Assessment Notice (FAN) on January 8, 2013, assessing petitioner for deficiency WTC, EWT, final tax, and final VAT in the total amount of ₱2,858,978,213.08 for taxable year 2009.

On February 7, 2013, petitioner filed its protest[6] dated February 5, 2013 to the FLD and the FAN.

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[2] Docket, Vol. I, Par. 1, The Parties, Petition for Review, p. 10.
[3] Docket, Vol. I, Exhibit "P-1", pp. 25-34.
[4] Docket, Vol. III, Exhibit "P-2", pp. 896-903.
[5] Docket, Vol. I, Exhibit "P-3", pp. 59-75.
[6] Docket, Vol. III, Exhibit "P-4", pp. 921-928.

On December 11, 2015, petitioner received from respondent the Final Decision on Disputed Assessment (FDDA)[7] dated December 10, 2015, which after evaluation of petitioner's protest, still found due from petitioner deficiency EWT, final tax, final VAT, and compromise penalty in the total amount of ₱3,773,784,693.81 for taxable year 2009; detailed as follows:

TAX TYPE	BASIC	20% INTEREST	COMPROMISE PENALTY	TOTAL
Expanded Withholding Tax	₱ 739,923,935.20	₱ 878,791,762.64	₱	₱ 1,618,715,697.84
Final Tax	75,125,899.27	387,584,619.03		462,710,518.30
Final VAT	775,033,524.91	917,299,952.76		1,692,333,477.67
Compromise Penalty			25,000.00	25,000.00
TOTAL	**₱1,590,083,359.38**	**₱2,183,676,334.43**	**₱25,000.00**	**₱3,773,784,693.81**

Hence, petitioner filed the instant Petition for Review before this Court on January 11, 2016.[8]

Within the extended time granted by the Court,[9] respondent filed his Answer[10] on April 4, 2016, interposing the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

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PETITIONER IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAX (WE) IN THE TOTAL AMOUNT OF P1,618,715,697.84 INCLUSIVE OF INCREMENTS.

7. Petitioner argued that respondent erred in assessing it deficiency Expanded Withholding Tax (EWT). It further argued that the corresponding EWT for the income payments were already paid by the National Power Corporation (NPC) and petitioner. Allegedly the corresponding income payments subject of the deficiency assessment were incurred by NPC to carry out its obligations under the 2009 Operation and Maintenance Agreement.

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[7] Docket, Vol. I, Exhibit "P-5", pp. 84-85.
[8] Docket, Vol. I, pp. 10-21.
[9] Docket, Vol. I, Orders dated February 5, 2016 and March 7, 2016, pp. 226 and 235.
[10] Docket, Vol. I, pp. 236-247.

14. Failure on the part of petitioner to present proof as to the allegations made makes the same nothing but self-serving arguments.

15. The above findings resulted to a deficiency assessment for Expanded Withholding Tax (WE) in the amount of ₱1,618,715,697.84, inclusive of increments.

PETITIONER IS LIABLE FOR DEFICIENCY FINAL TAX IN THE AMOUNT OF ₱462,710,518.30.

16. Petitioner interposed that it shall pay the deficiency assessment for Final Tax. However, no proof of payment was attached to the instant petition to support such contention. Thus, respondent deems it prudent to discuss the basis for such audit findings in order to protect the regularity and the validity of the assessment.

17. Verification of income payments subject to final tax as per audit disclosed that there were payments to non-residents amounting to ₱1,792.65 and interest expense amounting to ₱751,254,511.07 not subjected to withholding pursuant to Section 28(B)(1) of the Tax Code, as amended. Included are the penalties of ₱31,510,818.33 for late remittance of final tax amounting to ₱105,806,263.85, ₱216,499,041.21 for late remittance of ₱704,925,513.32 and ₱50,708,626.66 for late remittance of ₱236,566,799.62 paid using the BIR Form 0605 on January 16, 2010.

18. In addition, the compromise penalty of ₱25,000.00 was assessed for failure of petitioner to submit Annual Alphalist pursuant to Section 2.58(c) of Revenue Regulations No. 2-98 and Revenue Memorandum Order (RMO) No. 19-2007.

19. The above audit findings resulted in a deficiency final tax of ₱462,710,518.30, inclusive of increments.

PETITIONER IS LIABLE FOR DEFICIENCY FINAL VALUE-ADDED TAX (VAT) IN THE AMOUNT OF ₱1,692,333,477.67.

20. Petitioner interposed that the corresponding Final VAT for the income payments subject of the instant deficiency assessment were properly remitted. *am*

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22. xxx Further, the records of this case disclosed that petitioner has not introduced sufficient evidence to overthrow the validity of the audit findings.

23. Hence, the above findings resulted to a deficiency Final VAT in the amount ₱1,692,333,477.67, inclusive of increments.

PETITIONER IS LIABLE FOR THE CORRESPONDING COMPROMISE PENALTY.

24. Petitioner contends that it should not be subject of the compromise penalty since this are only suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer.

25. Respondent interposes that the compromise penalty against petitioner is proper and with basis. Audit examination of petitioner disclosed that it failed to file its Annual Alphalist as required under Section 2.58(c) of Revenue Regulations No. 2-98 viz:

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THE LETTER OF AUTHORITY (LOA), NOTICE OF INFORMAL CONFERENCE (NIC), PRELIMINARY ASSESSMENT NOTICE (PAN), FORMAL LETTER OF DEMAND (FLD) AND FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) WERE ISSUED IN ACCORDANCE WITH LAW, RULES AND JURISPRUDENCE.

27. As can be deduced from the following narrations of facts, the procedure prescribed under Revenue Regulations No. 12-99 had been complied with by respondent, thus:

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28. Based on the foregoing, the findings of deficiency tax liabilities against petitioner for taxable year 2009 is proper in all respects. It was made explicit by the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* that:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. **In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.**' (Emphasis ours)"

Respondent's Pre-Trial Brief[11] and petitioner's Pre-Trial Brief[12] were both filed on May 6, 2016. Subsequently, the parties filed their Joint Stipulation of Facts and Issues[13] on May 27, 2016. This was approved and adopted by the Court in the Pre-Trial Order[14] issued on June 21, 2016, which also terminated the pre-trial.

During trial, petitioner presented Mr. Ramoncito Do Paiso, Division Manager of petitioner's Budget and Tax Monitoring Division, as its sole witness.[15]

Thereafter, petitioner filed its Formal Offer of Evidence[16] on August 16, 2016, consisting of Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-5-1", "P-5-2", "P-6", "P-7", "P-8", "P-9", "P-9-1", "P-10", "P-10-1", "P-11", "P-11-1", "P-12", "P-12-1", "P-13", "P-14", "P-14-1", "P-15", "P-15-1", "P-16", "P-16-1", "P-17", "P-17-1", "P-18", "P-18-1", "P-19", "P-19-1", "P-20", "P-20-1", "P-21", "P-21-1", "P-22", "P-22-1", "P-23", "P-23-1", "P-24", "P-24-1", "P-25", "P-25-1", "P-26", "P-27", "P-27-1", "P-27-2", "P-27-", "P-5-2-1", "P-5-2-2", "P-5-2-3", "P-28", and "P-28-A". In the Resolution[17] dated September 23, 2016, the Court admitted all of petitioner's formally offered exhibits.

On the other hand, respondent presented Revenue Officers Ma. Theresa V. Carillo[18] and Teresita B. Villamor[19] as his witnesses.

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[11] Docket, Vol. I, pp. 257-264.
[12] Docket, Vol. I, pp. 299-306.
[13] Docket, Vol. I, pp. 312-318.
[14] Docket, Vol. I, pp. 325-329.
[15] Docket, Vols. I and III, Minutes of the Hearing dated June 29, 2016 and July 20, 2016, pp. 330 and 849; Exhibit "P-28-A", Docket, Vol. II, pp. 505-525.
[16] Docket, Vol. III, pp. 857-869.
[17] Docket, Vol. III, pp. 1044-1045.
[18] Docket, Vol. III, Minutes of the Hearing dated October 17, 2016, p. 1049.
[19] Docket, Vol. III, Minutes of the Hearing dated November 14, 2016, p. 1057. *un*

Respondent filed his Formal Offer of Evidence[20] on November 24, 2016, consisting of Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9, R-9-a to R-9-c", "R-10", "R-11", "R-12, R-12-a to R-12-c", "R-13", "R-14", "R-15", "R-16", "R-17", and "R-17-a".

In the Resolution[21] dated March 7, 2017, the Court admitted all of the said exhibits as respondent's evidence. The parties were also given a period of thirty (30) days within which to submit their respective memoranda.

On March 17, 2017, respondent filed an Omnibus Motion A. For Reconsideration B. To Recall Witness C. To Defer Submission of Respondent's Memorandum[22]. This was denied by the Court in the Resolution[23] dated August 31, 2017.

Respondent filed his Memorandum[24] on October 20, 2017; while, petitioner filed its Memorandum[25] on October 23, 2017. Hence, the Court declared the case submitted for decision on November 2, 2017.[26]

ISSUE

The parties submitted the following issues for this Court's disposition:[27]

1. As raised by PSALM:

> Whether PSALM is liable for deficiency Expanded Withholding Tax, Final Value Added Tax, and Compromise Penalty for Taxable Year 2000 in the total amount of ₱3,311,074,175.51, inclusive of deficiency and delinquency interest.

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[20] Docket, Vol. III, pp. 1060-1070.
[21] Docket, Vol. III, pp. 1076-1077.
[22] Docket, Vol. III, pp. 1078-1081.
[23] Docket, Vol. III, pp. 1090-1092.
[24] Docket, Vol. III, pp. 1097-1099, 1101-1108, and 1126.
[25] Docket, Vol. III, pp. 1109-1124.
[26] Docket, Vol. III, p. 1128.
[27] Docket, Vol. I, Issues to be Resolved, Joint Stipulation of Facts and Issues, p. 313. *an*

2. As raised by CIR:

> Whether PSALM is liable to pay the total amount of ₱3,773,784,693.51 representing the deficiency Expanded Withholding Tax, Final Tax, Final Value Added Tax, and Compromise Penalty for taxable year 2009 as well as the 20% Deficiency and Delinquency interest pursuant to Section 249 of the NIRC of 1997.

Petitioner's Arguments[28]

Petitioner argues that it is not liable for deficiency EWT. It submits that the EWT for income payments were already paid by both NPC and PSALM. Moreover, petitioner contends that contrary to respondent's observation, no variance exists between the amounts reflected in its 2009 BIR Form Nos. 1601E and 1604E. It asserts that the penalties for negative balance and non-filing of the Monthly Alphalist of Payees (MAP) were arbitrary and baseless. Likewise, petitioner avers that the penalty for late remittance of EWT for certain 2009 expenses should be cancelled as they pertain to Certified Obligations which are not yet due and legally demandable against it.

Moreover, petitioner contends that it is not liable to pay deficiency final VAT. It submits that the final VAT for the income payments that respondent alleges were not subjected to withholding VAT, were already paid by the NPC and petitioner.

Finally, petitioner argues that the BIR erred in imposing compromise penalty as there is no legal basis for the imposition.

Respondent's Counter-Arguments[29]

Respondent argues that the Court has no jurisdiction over the instant petition. He points out that petitioner is a government-owned and controlled corporation; hence, it should have appealed the FDDA to the Department of Justice pursuant to the Supreme Court's ruling in the case of *Power Sector Assets*

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[28] *Supra.*, Note 25.
[29] *Supra.*, Note 24. con

and Liabilities Management Corporation vs. Commissioner of Internal Revenue[30].

Likewise, respondent reiterates that petitioner is liable for deficiency EWT, final tax, final VAT, and compromise penalty for taxable year 2009.

RULING OF THE COURT

The Court shall determine first whether it has jurisdiction to entertain the present Petition for Review.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[31] The jurisdiction of the CTA regarding internal revenue tax assessments is provided under Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "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 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;
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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 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

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

[31] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

shall be deemed a denial;" (*Emphasis supplied*)

Similarly, Section 3(a)(1) and (2) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) **Decisions of 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;

(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*)

Based on the foregoing, the Court in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the BIR Commissioner in cases involving disputed assessments. Said appeal may be availed of by filing a Petition for Review with the CTA within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the BIR Commissioner to act on the disputed assessments.

However, it must be noted that in the case of *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*[32], the Supreme Court *En Banc* ruled that in disputes and claims solely between government agencies and offices, including GOCCs, the administrative procedure in Sections 2 and 3 of Presidential Decree (PD) No. 242, or the act "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," should be followed.[33] The significant portions of the Supreme Court's extensive discussion are quoted as follows:

> "We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists.
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> However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government-owned corporations, and the BIR, a government office, over the**

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

[33] **Section 2**. In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice, as Attorney General and ex officio legal adviser of all government-owned or controlled corporations and entities, in consonance with section 83 of the Revised Administrative Code. His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.

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 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).

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. Sections 1, 2, and 3 of PD 242 read:

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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

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PD 242 is only applicable to disputes, claims, and controversies **solely** between or among the departments, *an* 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

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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, 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.

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

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Thus, even if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to intragovernmental disputes. 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 *an*

> 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.
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> 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. xxx"

Based on the foregoing, the Supreme Court *En Banc* has reconciled and interpreted the provisions of PD No. 242 and declared in no uncertain terms, that all controversies involving government offices, bureaus, agencies and instrumentalities, including GOCCs fall within the initial jurisdiction of the Secretary of Justice or the Solicitor General under Sections 67 and 68, Chapter 14, Book IV of Executive Order No. 292, otherwise known as the "Administrative Code of 1987".[34] And such interpretation must be respected by all courts.

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.[35] After all, any pronouncement made by the Supreme Court in its judicial decisions becomes part of the legal system of the Philippines.[36]

Thus, 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

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[34] **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.
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:
(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
(2) The Secretary of Justice, in all other cases not falling under paragraph (1).

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

[36] 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.

resolve disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies, and instrumentalities of the National Government.

In the instant case, petitioner PSALM is a GOCC, while respondent represents the Bureau of Internal Revenue, which is a government agency. Clearly, the instant petition involves a dispute solely between a government corporation and another government agency, as such this Court is bereft of jurisdiction to take cognizance of the present case.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[37]

WHEREFORE, in light of the foregoing, the Petition for Review is hereby **DISMISSED** due to lack of jurisdiction. Let the copy of this decision be furnished to the Office of the Solicitor General pursuant to the provisions of the Administrative Code of 1987.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

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[37] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice