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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

LIGHT RAIL TRANSIT AUTHORITY, Petitioner,	**CTA EB NO. 1874** (CTA Case No. 8746)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
BUREAU OF INTERNAL REVENUE, Represented by the Commissioner of Internal Revenue, Respondent.	Promulgated: OCT 11 2019 3:22 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on February 20, 2019 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

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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;

xxx xxx xxx

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

Decision[2] in the case entitled Light Rail Transit Authority vs. Commissioner of Internal Revenue, docketed as CTA Case No. 8746, dated January 17, 2018, rendered by the Third Division of this Court, and its Resolution[3] dated May 4, 2018.

The Third Division of this Court denied petitioner's Petition for Review for lack of jurisdiction.

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

Decision dated January 17, 2018:

"xxx, petitioner failed to file its protest within the 30-day period provided by law. Thus, the assessment is deemed to have not been protested. Accordingly, there is no "denial of a valid protest" in this case and the issued FDDA cannot be considered as a decision on "disputed assessment" which would have been appealable before this Court.

It must be reiterated that the jurisdiction of the Tax Court is to review by appeal decisions of the Commissioner of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction.

Since the Court cannot consider the FDDA in this case as the "decision on the disputed assessment" because petitioner failed to timely protest the assessment, which consequently became final and executory, the Court has no jurisdiction to take cognizance of the instant case.

With the foregoing findings, the Court deems it unnecessary to resolve the stipulated issues.

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[2] En Banc Docket, pp. 33-45.
[3] En Banc Docket, pp. 47-49.

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> ***WHEREFORE****, premises considered, the instant Petition for Review is* ***DENIED*** *for lack of jurisdiction.*
>
> ***SO ORDERED****."*

Resolution dated May 4, 2018:

> *"****WHEREFORE****, finding no substantial reason to disturb the findings of this Court in the assailed Decision, petitioner's* ***Motion for Reconsideration (of the Decision, dated 17 January 2018)*** *is* ***DENIED*** *for lack of merit.*
>
> ***SO ORDERED****."*

The antecedent facts as narrated by the Court in Division in its Decision dated January 17, 2018, read as follows:

> *"Petitioner Light Rail Transit Authority is a government instrumentality organized and existing by virtue of Executive Order No. 603.*
>
> *On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) 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 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.*
>
> *A Notice of Informal Conference signed by Officer-in-Charge (OIC) Revenue Officer Corazon Montes with accompanying computation sheet was received by petitioner, and an Informal Conference was conducted on June 8, 2011.*
>
> *Respondent later issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies dated December 22, 2011 and received by petitioner on the same date, covering deficiency value-added tax (VAT) and percentage tax assessments for taxable year 2008.*

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Subsequently, respondent, through Regional Director Nestor S. Valeroso, issued a Formal Assessment Notice (FAN) dated January 19, 2012 to petitioner for taxable year 2008; which petitioner protested on March 6, 2012.

In an undated letter received by petitioner on July 8, 2013, the OIC Revenue Officer stated that without the supporting documents, the justifications made by petitioner are, at best, self-serving. The OIC Revenue Officer further requested the petitioner to submit additional documents.

Petitioner thereafter received the FDDA dated October 24, 2013 on November 7, 2013.

Petitioner then filed the instant Petition for Review by registered mail on December 6, 2013 and received by this Court on December 11, 2013.

Respondent, for his part, filed the Answer to the Petition for Review on April 11, 2014, xxx:

xxx xxx xxx.

Subsequently, the Court set the Pre-Trial Conference on June 5, 2014 which was reset to July 10, 2014.

Petitioner and respondent submitted their Pre-Trial Briefs on May 29, 2014 and on June 4, 2014, respectively. The parties also filed their Joint Stipulation of Facts on July 24, 2014.

A Pre-Trial Order was issued on August 12, 2014, terminating the pre-trial of the case and setting the initial presentation of petitioners' evidence.

During the hearing held on February 16, 2015, petitioner presented its witness, Mr. Nicolas G. Ombao, petitioner's Department Manager A, who testified on his Judicial Affidavit dated December 19, 2014. Petitioner likewise presented Ms. Leilani H. Anonay, its Corporate Finance Services Chief, during the hearing held on July 27, 2015, who testified by way of Judicial Affidavit executed on July 15, 2015. Petitioner also presented the testimony of Atty. Adan T. Delamide, the Independent

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Certified Public Accountant, during the hearing held on March 14, 2016, and by way of a Judicial Affidavit executed on January 28, 2016.

After presentation, marking, identification, and formal offer, the Court admitted Exhibits "1" to "P-1939" as petitioner's evidence, except for the following exhibits:

xxx xxx xxx.

When it was respondent's turn to present evidence, he presented the testimony of Revenue Officer Narissa B. Ty, the one who conducted the tax audit of petitioner for taxable year 2008, by way of a Judicial Affidavit dated August 10, 2016. As to documentary exhibits, the Court admitted Exhibits "R-1" to "R-7-a" as respondent's evidence.

Thereafter, the Memorandum (For the Petitioner LRTA) was filed by registered mail on January 4, 2017 and received by the Court on January 11, 2017; while respondent failed to file a Memorandum. As a result, the Court declared the case submitted for decision on January 25, 2017."

On January 17, 2018, the Third Division of this Court rendered a Decision which denied the petition for lack of jurisdiction on the ground that no protest was timely made rendering the assessment final and executory. Likewise, petitioner's Motion for Reconsideration (Of the Decision, dated 17 January 2018) was denied for lack of merit.

Hence, this Petition for Review was filed.

Petitioner submits the following issues:

"19. Whether or not the 3rd Division of the Honorable Court has jurisdiction over the petition for review, and

20. Whether or not the taxes, sought to be collected by the respondent from the Petitioner, are legally due and demandable."[4]

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[4] Petition for Review, En Banc Docket, pp. 18 -19.

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In support of the petition, petitioner argues as follows:

"A.
THE 3RD DIVISION OF THIS HONORABLE COURT HAD JURISDICTION TO TAKE COGNIZANCE OF THE PETITION FOR REVIEW BEFORE IT.

B.
THE DEFICIENCY VALUE ADDED TAXES, ASSESSED AND SOUGHT TO BE COLLECTED FROM THE PETITIONER, ARE FROM SALES THAT ARE NOT SUBJECT TO VAT, HENCE, NOT LEGALLY DUE.

C.
IN THE SAME MANNER, THE DEFICIENCY PERCENTAGE TAX, ASSESSED AND SOUGHT TO BE COLLECTED FROM THE PETITIONER, IS ACTUALLY A DEDUCTION, HENCE, NOT LEGALLY DUE."[5]

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 Presidential Decree No. (PD) 242 [6] as 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", to wit:

"CHAPTER 14

Controversies Among Government Offices and Corporations

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[5] Ibid.

[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

> ***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:*
>
> *(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).*
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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.*
>
> ***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*

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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 of 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 disputed assessments as well as claim for refunds of internal revenue taxes are subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Pursuant to Section 7 (a) (1)[7] and (2)[8]of Republic Act No. 1125[9] (RA 1125) as amended by Republic Act No. 9282[10] (RA

[7] 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;

[8] 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

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9282), in relation to Rule 4 Section 3 (a)(2) of the Revised Rules of the Court of Tax Appeals (RRCTA), the Court in Division shall exercise appellate jurisdiction over decision or inaction of the CIR in cases involving disputed assessment or 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 Division shall exercise:*
>
> *(a) Exclusive original 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*

Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

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

[10] 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

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> *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;***

It is settled jurisprudence that jurisdiction over the subject matter is fundamental for a court to act on a given 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. [11]

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

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[11] 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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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 agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts.[12]

On the other hand, pursuant to Section 4[13] 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 disputed assessments and claim for refunds of internal revenue taxes is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals pursuant to RA 1125[14] as amended by RA 9282[15].

Conflict arises if government agencies and offices, including government-owned or controlled corporations, which

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

[13] *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)*

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

[15] 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

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are under the executive control and supervision of the President, dispute the assessment made by the CIR.

Let us examine the pronouncement of the Supreme Court pertaining to the repugnancy between RA 1125 and PD 242.

In the case of *Development Bank of the Philippines v. Court of Appeals, et al.*, [16] the Supreme Court had pronounced 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. No. 242), being the latest expression of the legislative will, should prevail over the earlier."*

However, in the consolidated cases of *Philippine National Oil Company vs. The Hon. Court of Appeals, The Commisioner of Internal Revenue and Tirso Savellano* [17] and *Philippine National Bank vs. The Hon. Court of Appeals, Court of Tax Appeals, Tirso B. Savellano and Commissioner of Internal Revenue*[18] (herein referred as PNOC Case), the Supreme Court ruled that PD 242 should not affect RA 1125. RA 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to PD 242. Disputes, claims and controversies, falling under Section 7 of RA 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*

[16] G.R. No. 86625, December 22,1989,
[17] G.R. No. 109976, April 26, 2005.
[18] G.R. No. 112800, April 26, 2005.

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Appeals, et al., and refers to the earlier case of Lichauco & Company, Inc. v. Apostol, et al.,xxx.

xxx xxx xxx.

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.

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[19] (*PAGCOR Case*), the Supreme Court reiterated the PNOC case and ruled that the **Secretary of Justice has no jurisdiction to review disputed assessments.**

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

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However, in the *PSALM Case*[20], 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.*
>
> *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.****"*

[20] Supra Note 12.

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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. All public entities (which covers disputes between the BIR and other government entities). Thus, disputes regarding assessments made by the CIR against 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, it is undisputed that petitioner Light Rail Transit Authority is a government instrumentality organized and existing by virtue of EO 603.[21] A government instrumentality that disputes the Final Decision on Disputed Assessment (FDDA) made by the Commissioner of the Bureau of Internal Revenue, an agency of the National Government. Both offices are under the executive branch and under the under the executive control and supervision of the President of the Philippines.

In Angara v. Electoral Commission[22], 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 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*

[21] Division Docket, Vol. I, p. 451, par. 1, Summary of Admitted Facts, Joint Stipulation of Facts (JSF).
[22] 63 Phil. 139 (1936)

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determine the law, and hence to declare executive and legislative acts void if violative of the Constitution."

Petitioner and respondent 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.

WHEREFORE, premises considered, the Petition for Review docketed as **CTA EB No. 1874** is **DENIED** for lack of merit. Accordingly, the Petition for Review before the Third Division of this Court entitled "Light Rail Transit Authority vs. Commissioner of Internal Revenue" and docketed as **CTA Case No. 8746** is **DISMISSED** for lack of jurisdiction. No pronouncement as to costs.

Let a copy of this Decision be furnished to the Secretary of Justice.

SO ORDERED.

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

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(Joins PJ del Rosario's Concurring Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(With Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

LIGHT RAIL TRANSIT AUTHORITY,
Petitioner,

-*versus*-

BUREAU OF INTERNAL REVENUE Represented by the Commissioner of Internal Revenue,
Respondent.

CTA EB NO. 1874
(CTA Case No. 8746)

Present:

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

Promulgated:

OCT 11 2019 3:33 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Light Rail Transit Authority (LRTA) in CTA EB No. 1874 for lack of merit, thereby ultimately dismissing LRTA's Petition for Review in CTA Case No. 8746 for lack of jurisdiction.

I, however, wish to emphasize that since the Supreme Court has reconciled and interpreted the provisions of Presidential Decree (PD) No. 242 and Republic Act (RA) No. 1125, as amended, and declared in *Power Sector Assets and Liabilities Management*

Corporation vs. Commissioner of Internal Revenue[1]*("PSALM")*, in no uncertain terms, that all controversies involving government offices, bureaus, agencies and instrumentalities, including GOCCs fall within the initial jurisdiction of the Department of Justice (DOJ) - - **the referral of the present petition to the DOJ is the most appropriate action to take**.

Applying by analogy the doctrine laid down in *Commissioner of Internal Revenue vs. Secretary of Justice and Philippine Amusement and Gaming Corporation*[2] *(PAGCOR")* that when an office (as the DOJ) assumes jurisdiction over a case at the time when the rules vest jurisdiction upon it, yet, during the pendency of such action, a new doctrine divests the office of the jurisdiction it originally exercised, **the proper and prudent course of action to take would be to refer the case to the appropriate body to which jurisdiction has been subsequently vested**.

All told, I VOTE to: (i) **DENY** Light Rail Transit Authority's Petition for Review in CTA EB No. 1874 for lack of merit; (ii) **DISMISS** Light Rail Transit Authority's Petition for Review in CTA Case No. 8746 for lack of jurisdiction; and, (iii) **REFER** CTA EB No. 1874 and CTA Case No. 8746, both entitled *"Light Rail Transit Authority vs. Commissioner of Internal Revenue"*, to the Department of Justice for adjudication.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] G.R. No. 198146, August 8, 2017.
[2] G.R. No. 177387, November 9, 2016.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LIGHT RAIL TRANSIT AUTHORITY, Petitioner,	**CTA EB NO. 1874** (CTA Case No. 8746)
	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
- versus -	
BIR represented by the COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: **OCT 11 2019** 3:22 p.m.

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SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in denying the instant Petition for Review for lack of merit. The Petition for Review in CTA Case No. 8746 should be dismissed for lack of jurisdiction.

With all due respect however, I dissent from the *ponencia*'s reason to do so.

According to the *ponencia*, following *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue v. Commissioner of Internal Revenue*[1] ("*PSALM v. CIR*"), the dispute between Petitioner, as a government instrumentality existing by virtue of Executive Order 603, and the Bureau of

[1] G.R. No. 198146, August 08, 2017.

Internal Revenue, is governed by Presidential Decree 242[2]. Both offices are under the executive branch and under the executive control and supervision of the President of the Philippines. As such, it is the Secretary of Justice who has the jurisdiction over the dispute between them and not this Court.

I humbly offer a different view.

I maintain my position that when the controversy between or among government offices, agencies and instrumentalities, including government-owned and controlled corporations involve any of the matters listed in Section 7(a)[3] of Republic Act ("R.A.") No. 1125[4], as amended by RA No. 9282[5], then it is the Court of Tax Appeals who has exclusive appellate jurisdiction.

On this score, I adopt my discussion in *PNOC Development and Management Corporation v. Commissioner of Internal Revenue*[6] ("*PNOC*"), which expound on why *PSALM v. CIR* should only be applied in instances of similar factual milieu which is not the case here. The relevant portions are quoted below:

> "xxx In that case, the Supreme Court decreed that '[u]nder Presidential Decree No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.'
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> The pertinent sections of PD 242 are as follows:

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[2] Prescribing The Procedure For Administrative Settlement Or Adjudication Of Disputes, Claims And Controversies Between Or Among Government Offices, Agencies And Instrumentalities, Including Government-Owned Or Controlled Corporations, And For Other Purposes. Issued on July 09, 1973.

[3] 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 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 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.

[4] An Act Creating The Court Of Tax Appeals, June 16, 1954.

[5] 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 Of Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, effective April 23, 2004.

[6] C.T.A. EB CASE NO. 1486, February 19, 2018.

'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.**

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

Section 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(a) The Solicitor General, with respect to disputes or claims [or] controversies between or among the departments, bureaus, offices and other agencies of the National Government;

(b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and

(c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b).' (*Emphasis supplied*)

The provisions of PD 242 have also been embodied in Chapter 14, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987, which took effect on 24 November 1989.

The holding in the PSALM case was justified on the grounds that: a) the President's constitutional power of control over all the executive departments, bureaus and offices under Section 17, Article VII of the Constitution must be upheld; 42 b) under the doctrine of exhaustion of administrative remedies, relief under PD 242 must be pursued first prior to seeking judicial recourse, otherwise, the action would be premature and the case not ripe for judicial determination; 43 and c) in harmonizing Section 4 of the NIRC of 1997 which delineates the powers of the CIR with PD 242, the NIRC of 1997 is a general law while PD 242 is a special law and, hence, must prevail over the former.

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

> "The use of the word 'shall' in a statute connotes a mandatory order or an imperative obligation. 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.
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> The law is clear and covers 'all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements.' When the law says 'all disputes, claims and controversies solely' among government agencies, the law means all, without

> exception. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.
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> xxx xxx xxx
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> PD 242 is only applicable to disputes, claims, and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations.' (*Boldface and emphasis in the original*)

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

It is axiomatic that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. 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.

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

> 'SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed

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 relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;' (*Emphasis supplied*)

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

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

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

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

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

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

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

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

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

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

Using the above standards, it is apparent that PD 242 is a general law on the authority of the Secretary of Justice to settle and adjudicate all disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including GOCCs while RA 9282 is a specific law vesting exclusive appellate jurisdiction on the CTA in cases pertaining to disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC of 1997.

Furthermore, in the construction of these two statutes, it is of utmost importance to note the following. PD 242 was issued on July 9, 1973. The Administrative Code of 1987 which embodies the provisions of PD 242 took effect on November 24, 1989. On the other hand, RA 9282 which expanded the jurisdiction of the CTA and elevated its rank to the level of a collegiate court with special jurisdiction took effect on April 23, 2004. Once again, using the standards laid down in the *Vinzons-Chato* case, RA 9282, the special law that was passed later, must be regarded as an exception to or qualification of PD 242, the prior general law.

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

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

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

> 'Section 17. Repealing Clause. — All laws, executive orders, executive issuances or letter of instructions, or any part thereof, inconsistent with or contrary to the provisions of this Act are hereby deemed repealed, amended or modified accordingly.'

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

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

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

It has been said that if two or more laws on the same subject cannot possibly be reconciled or harmonized, one has to give way in favor of the other. There cannot be two conflicting laws on the same subject. Either the two laws are reconciled and harmonized or, if they cannot, the earlier one must yield to the later one, it being the later expression of legislative will.

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

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

> interpretation of the provisions of the NIRC of 1997 may properly follow the procedure for administrative settlement or adjudication of disputes laid down in PD 242 and the Administrative Code of 1987.
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> Considering the foregoing discussion and the fact that the Petition was timely filed, this Court has jurisdiction over this case and will exercise it so."

From all of the foregoing, this Court and not the Secretary of Justice has jurisdiction to entertain the instant case.

Yet, there is another reason which prevents the court *a quo* from reviewing Respondent's assessment.

The assessment already became final, executory and unappealable for failure by Petitioner to submit a timely protest to the Final Assessment Notice ("FAN").

Under Section 228 of the National Internal Revenue Code ("NIRC") of 1997 and it implementing regulation, Section 3.1.5 of Revenue Regulations ("RR") No. 12-99, the taxpayer is required to protest the assessment within a period of thirty (30) days from receipt thereof. Failure to contest the assessment within the 30-day period renders the assessment notice final, executory, and demandable. The pertinent portions of the NIRC of 1997 and RR No. 12-99 are quoted hereunder for ready reference:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."[7]

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

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3.1.5 *Disputed assessment.* – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest

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[7] *Emphasis supplied.*

against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

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If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable."[8]

In the case at bar, Petitioner received the FAN on January 19, 2012. Petitioner should have filed its protest on or before thirty (30) days from January 19, 2012 on until February 20, 2012. Petitioner's protest on March 06, 2012 was filed out of time. Therefore, the Court in Division is already barred from determining the validity and correctness of the assessment.

From all the foregoing, I vote for the **DENIAL** of the Petition for Review filed by Petitioner. The Petition for Review in CTA Case No. 8746 must be dismissed for lack of jurisdiction.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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8 *Emphasis and underscoring supplied.*