REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

BANGKO SENTRAL NG PILIPINAS, *Petitioner,*	**CTA CASE NO. 10278**
-versus-	**Members:** **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JAN 11 2024 11:50 a.m.

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DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* prays that judgment be rendered ordering respondent to refund to petitioner the total amount of ₱1,525,954.63, representing surcharge, interest and compromise penalty, on the alleged late payment of expanded withholding tax (EWT).[1]

THE PARTIES

Petitioner Bangko Sentral ng Pilipinas is a government instrumentality created by virtue of Republic Act (RA) No. 7653, with principal office at A. Mabini corner P. Ocampo Streets, Malate, Manila. It is registered as a taxpayer with Taxpayer Identification Number 000-354-790, and may be served with notices, orders, and processes through its Office of the General Counsel and Legal Services.[2]

Respondent is the duly appointed Commissioner of Internal Revenue who is tasked to assess and collect all national internal revenue taxes, fees and charges,

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[1] Statement of the Case, Pre-Trial Order dated February 15, 2022, Docket, p. 345.
[2] Par. 1.1, Stipulation of Facts, *Joint Stipulations of Facts and Issues* (JSFI), Docket, p. 333.

and enforce all forfeitures, penalties and fines connected therewith. He holds office at the Bureau of Internal Revenue (BIR) National Office Bldg., Agham Road, Diliman, Quezon City where he may be served with summonses, legal processes, orders and resolutions of the Court.[3]

THE FACTS OF THE CASE

Petitioner acquired the subject properties from one of its borrower banks through *dacion en pago*. Details of the subject properties are as follows:

Transfer Certificate of Title (TCT) No.	Location
060-2016018470[4]	Lot 1, Blk. 10, Southwoods Ecocentrum Business Park, Brgy. San Francisco, Biñan City, Laguna
060-2017022201[5]	Lot 4, Blk. 1, Southwoods Ecocentrum Business Park, Brgy. San Francisco, Biñan City, Laguna[6]

In due course, and as part of petitioner's mandate, it disposed the subject properties, through a public auction, of which, Ms. Rowena A. Jamaji turned out as the winning bidder. The respective bid prices were as follows:

TCT No.	Location	Bid Price
060-2016018470	Lol 1, Blk. 10	₱42,088,240.00
060-2017022201	Lot 4, Blk. 1	₱53,545,638.00[7]

Ms. Jamaji paid the full bid price (net of the 10% cash bond) for both properties on March 21, 2018.[8] The respective Deeds of Sale were also both executed on April 16, 2018.[9] The capital gains taxes on the sale were respectively paid on April 18, 2018 and April 12, 2018, as follows:

TCT No.	Location	Amount of CGTs Paid	Credit Advice No./Date
060-2016018470	Lot 1, Blk. 10	₱2,525,294.40	9137 / April 18, 2018
060-2017022201	Lot 4, Blk. 1	₱3,212,738.28	8588 / April 12, 2018[10]

However, Revenue District Office (RDO) 57, Biñan, Laguna, considered the sale as subject to EWT, and assessed petitioner for surcharge, interest, and

[3] Par. 1.2, Stipulation of Facts, JSFI, Docket, pp. 333 to 334.
[4] Exhibit "P-9", Docket, pp. 447 to 448.
[5] Exhibit "P-10", Docket, pp. 449 to 450.
[6] Par. 1.3, Stipulation of Facts, JSFI, Docket, p. 334.
[7] Par. 1.4, Stipulation of Facts, JSFI, Docket, p. 334. Refer also to Exhibit "P-11", Docket, pp. 451 to 452.
[8] Par. 1.5, Stipulation of Facts, JSFI, Docket, p. 334. Refer also to Exhibits "P-12" to "P-13", Docket, pp. 453 to 454.
[9] Par. 1.6, Stipulation of Facts, JSFI, Docket, p. 334. Refer also to Exhibits "P-14" to "P-15", Docket, pp. 455 to 462.
[10] Par. 1.7, Stipulation of Facts, JSFI, Docket, p. 334. Refer also to Exhibits "P-16" to "P-21" Docket, pp. 463 to 468.

penalty for the supposed late payment of EWT for the sale of the subject properties.[11]

On May 22, 2018, petitioner paid under protest, as follows:

TCT No.	Location	Amount Paid	Credit Advice No./Date
060-2016018470	Lot 1, Blk. 10	Tax Base: Capital gains tax (CGT) Paid ₱2,525294.40 Additional Assessments: 25% surcharge 631,323.60 20% Interest 9,686.06 Compromise penalty <u>40,000.00</u> Total **₱681,009.66**	11398 / May 22, 2018
060-2017022201	Lot 4, Blk. 1	Tax Base: CGT Paid ₱3,212,738.28 Additional Assessments: 25% surcharge 803,184.57 20% Interest 1,760.40 Compromise penalty <u>40,000.00</u> Total **₱844,944.97**	11394 / May 22, 2018[12]

Petitioner administratively claimed for refund of the surcharge, interest, and penalty, for the supposed late payment of the EWT, through the following actions:[13]

a. Petitioner sought a refund through the letter dated May 22, 2018 addressed to and received by RDO 57, Biñan, Laguna on May 29, 2018.[14]

b. Petitioner sought another refund through the letter dated August 9, 2018 addressed to and received by RDO 125 – Large Taxpayers Service (LTS) on August 10, 2018.[15]

c. In the letter dated August 23, 2018, respondent, through Teresita M. Dizon, OIC-Assistant Commissioner, LTS,

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[11] Par. 1.8, Stipulation of Facts, JSFI, Docket, p. 335. Refer also to Exhibit "P-22" to "P-23", Docket, pp. 469 to 470.
[12] Par. 1.9, Stipulation of Facts, JSFI, Docket, p. 335. Refer also to Exhibits "P-24" to "P-33", pp. 471 to 480-c.
[13] Par. 1.10, Stipulation of Facts, JSFI, Docket, pp. 335 to 336.
[14] Exhibit "P-1", Docket, pp. 422 to 423.
[15] Exhibit "P-2", Docket, pp. 424 to 431.

informed petitioner that its request for refund was indorsed to Revenue Region 9B – LaQueMar.[16]

d. In the letter dated September 13, 2018, petitioner acknowledged receipt of the letter dated August 23, 2018 of respondent, through Teresita M. Dizon, OIC-Assistant Commissioner, LTS.[17]

e. In the letter dated September 13, 2018, petitioner inquired as to the status of its request for refund with RDO 57.[18]

f. In the letter dated February 11, 2020, Revenue Region 9B, Legal Division informed that petitioner's claim for refund is held in abeyance due to its pending open cases, which should first be resolved with RDO 57.[19]

g. Petitioner thus inquired with RDO 57 as to the status of these open cases in order to properly address them, through the letter dated May 13, 2020, received on May 16, 2020.[20]

h. Petitioner reiterated its claim for refund through the letter dated May 13, 2020 addressed to respondent, received on May 19, 2020.[21]

Petitioner's claim for refund has not been acted upon either by the RDO 57, RDO 125-LTS, the Regional Director of Revenue Region 9B, or respondent.[22]

Thus, petitioner filed the present *Petition of Review* on May 20, 2020.[23]

On September 18, 2020, respondent filed his *Answer*.[24]

Respondent transmitted the *BIR Records* for this case on November 17, 2020.[25]

[16] Exhibit "P-3", Docket, p. 432.
[17] Exhibit "P-4", Docket, p. 433.
[18] Exhibit "P-5", Docket, p. 434.
[19] Exhibit "P-6", Docket, pp. 435 to 436.
[20] Exhibit "P-7", Docket, p. 437.
[21] Exhibit "P-8", Docket, pp. 438 to 446.
[22] Par. 1.11, Stipulation of Facts, JSFI, Docket, p. 336.
[23] Docket, pp. 10 to 23.
[24] Docket, pp. 148 to 152.
[25] Docket, pp. 157 to 158.

The Pre-Trial Conference was initially set on March 11, 2021.[26] However, the same was reset to, and eventually held on November 10, 2021.[27] Prior thereto, the *Pre-Trial Brief* of petitioner was filed on March 4, 2021,[28] while *Respondent's Pre-Trial Brief* was submitted on October 21, 2021.[29]

On December 1, 2021, the parties filed their *Joint Stipulation of Facts and Issues*,[30] which was admitted and approved by the Court in its Resolution dated December 16, 2021,[31] thereby deeming the termination of the pre-trial. The Pre-Trial Order dated February 15, 2022 was then issued.[32]

Trial then ensued.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Frederick C. Ramos,[33] acting Bank Officer IV of petitioner's Asset Management Department (AMD); (2) Mr. Sonny C. Cuario,[34] Messenger at petitioner's Office of the General Counsel and Legal Services; and (3) Ms. Maria Luisa S. Abeleda,[35] Senior Accounting Specialist of petitioner's Financial Accounting Department.

On September 1, 2022, petitioner filed its *Formal Offer of Evidence*,[36] to which respondent filed his *Comment (Re: Formal Offer of Evidence dated 31 August 2022)* on September 7, 2022.[37] In the Resolution dated October 27, 2022,[38] the Court admitted all of petitioner's offered exhibits.

For his part, respondent manifested during the hearing held on August 17, 2022 that he will no longer present any witness.[39]

On November 18, 2022, respondent filed his *Memorandum*,[40] while petitioner's *Memorandum* was posted on January 3, 2023.[41]

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[26] Notice of Pre-Trial Conference dated October 5, 2020, Docket, pp. 155 to 156.
[27] Resolution dated March 2, 2021, Docket, pp. 166 to 167; Minutes of the hearing held on, and Order dated, November 10, 2021, Docket, p. 313 to 316.
[28] Docket, pp. 206 to 222.
[29] Docket, pp. 308 to 310.
[30] Docket, pp. 333 to 340.
[31] Docket, pp. 342 to 343.
[32] Docket, pp. 345 to 354.
[33] Exhibit "P-35", Docket, pp. 41 to 61; Minutes of the hearing held on, and Order dated, April 19, 2022, Docket, pp. 379, and 387 to 388, respectively.
[34] Exhibit "P-38", Docket, pp. 176 to 181; Minutes of the hearing held on, and Order dated, May 17, 2022, Docket, pp. 397 to 398.
[35] Judicial Affidavit of Ms. Maria Luisa S. Abeleda, Docket, pp. 62 to 72; Supplemental Judicial Affidavit of Ms. Maria Luisa S. Abeleda, Docket, pp. 196 to 200; Minutes of the hearing held on, and Order dated, August 17, 2022, Docket, pp. 406 to 407.
[36] Docket, pp. 408 to 421.
[37] Docket, pp. 484 to 486.
[38] Docket, pp. 490 to 491.
[39] Refer to the Minutes of the hearing held on, and Order dated, August 17, 2022, Docket, pp. 406 to 407.
[40] Docket, pp. 493 to 497.
[41] Docket, pp. 499 to 517.

This case was deemed submitted for decision on January 27, 2023.[42]

THE ISSUE STIPULATED BY THE PARTIES

The parties stipulated this sole issue for this Court's resolution, *viz.*:

> "2.1 Whether or not petitioner is entitled to a refund of surcharge, interest, and compromise penalty on the late payment of Expanded Withholding Taxes in the amount of Php1,525,954.63."[43]

Petitioner's arguments:

Petitioner argues that the *Petition for Review* claiming for refund of erroneously paid taxes was timely filed with this Court, which has jurisdiction to hear and decide the case; that the sale of the subject properties is subject to CGT which petitioner timely and correctly paid; that the subject properties are not ordinary assets subject to EWT; that petitioner is not a bank as contemplated under existing regulations of the BIR; that the acquisition of the subject properties by BSP is not a business endeavor but a consequence of its legal mandate as lender of last resort; and that the BIR erroneously assessed EWT on the sale of the subject properties, which resulted in the overpayment of surcharge, interest, and compromise penalty for late payment.

Respondent's counter-arguments:

Respondent contends that tax refunds are strictly construed against the taxpayer; and that petitioner has the burden of proving that its right to tax refund indubitable exists and well-founded doubt is fatal to its claim.

THE COURT'S RULING

The present *Petition for Review* must be granted.

Governing provisions for refund claims

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended read:

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[42] Resolution dated January 27, 2023, Docket, p. 520.
[43] Stipulation of Issues, JSFI, Docket, p. 336.

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected**, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "*regardless of any supervening cause that may arise after payment.*"[44]

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[44] Commissioner of Internal Revenue vs. San Miguel Corporation, G.R. Nos. 180740 and 180910, November 11, 2019.

Furthermore, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[45]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject excise tax paid is an "erroneous or illegal tax".

The Court has jurisdiction to take cognizance of the Petition for Review.

Jurisdiction is defined as the power and authority of the courts to hear, try and decide cases.[46] It 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 of an action.[47]

As a corollary, it bears emphasis that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[48] In this connection, Section 7(a)(1) of RA No. 1125,[49] as amended by RA No. 9282,[50] provides as follows:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (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

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[45] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[46] Anama vs. Citibank, N.A. (formerly First National City Bank), G.R. No. 192048, December 13, 2017.
[47] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.
[48] Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc., G.R. No. 221780, March 25, 2019.
[49] An Act Creating the Court of Tax Appeals
[50] 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.

> 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; xxx *(Emphases added)*

Based on the foregoing provision, the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple.[51] In other words, the decisions of respondent which are appealable to this Court is not limited only to cases involving disputed assessments (which entails the filing of a protest to the FAN) or refund claims, but also includes "other matters" arising under the said laws.

In the case of *Commissioner of Internal Revenue us. Court of Tax Appeals (First Division), et al.*,[52] the Supreme Court held that: Section 7 of RA 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi- judicial agencies on tax-related problems must be brought exclusively to the Court of Tax Appeals. In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems.

Presidential Decree No. 242 (PD 242)[53] prescribes the procedures in settling administratively the disputes between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations (GOCC). It 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 comprehensive, encompassing all disputes, claims and controversies. It has been incorporated in Executive Order No. 292, the Revised Administrative Code of the Philippines. On the other hand, RA No. 1125[54] is a special law dealing with a specific subject matter - the creation of the Court of Tax Appeals (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, RA No. 1125, on the jurisdiction of the CTA, constitutes an exception to PD 242.

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[51] Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004; Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.

[52] CIR vs. CTA (First Division) and Pilipinas Shell Petroleum Corp. (G.R. No. 21050, March 15, 2021; Bureau of Customs, et al. vs. Pilipinas Shell Petroleum Corp., (G.R. 211294, March 15, 2021, and Pilipinas Shell Petroleum Corp. vs. CTA (First Division). et al., G.R. No. 212490, March I 5. 2021.

[53] 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.

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

Even supposing PD 242 should prevail over RA No. 1125, as amended by RA No. 9282[55] and RA No. 9503,[56] the present dispute would still not be covered by PD 242. It was stated in PD 242 that only disputes and controversies solely between or among departments, bureaus, offices, agencies and instrumentalities of the National Government, including GOCC, 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.

On the other hand, respondent Bangko Sentral ng Pilipinas was established as an independent central monetary authority that enjoys fiscal and administrative autonomy.[57]

While petitioner is under the President's executive control and supervision, respondent is neither under the Executive Branch of the government nor under the President's supervision and control to fall within the realm of P.D. No. 242. Hence, this Court has jurisdiction to take cognizance of instant Petition for Review.

Petitioner timely filed both its administrative and judicial claims.

In this case, to facilitate the immediate transfer of the subject properties, petitioner claims that it paid under protests the amounts of ₱681,009.66 and ₱84,944.97 or a total amount of ₱1,525,954.63 to the BIR on May 22, 2018, representing the additional assessed surcharge, interest, and compromise penalty, for late payment of EWT, as shown in its letter to the RDO of BIR Revenue District Office No. 57-Biñan City dated May 22, 2018[58] and BIR Form No. 0605.[59] Thus, counting two (2) years from the said date, petitioner had until May 22, 2020 to file its administrative and judicial claims for refund. Consequently, petitioner's administrative claim for refund filed on May 29, 2018 before respondent,[60] and the judicial claim for refund filed before this Court on May 20, 2020,[61] both fell within the two-year prescriptive period, pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended.

Correspondingly, petitioner timely filed its administrative and judicial claims for refund.

[55] 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.
[56] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and For Other Purposes.
[57] Section 1, RA No. 7653.
[58] Exhibit "P-1", Docket, pp. 422 to 423.
[59] Exhibits, P-24" and "P-28", Docket, pp. 471 and 475, respectively.
[60] Par. 1.10, Stipulation of Facts, JSFI, Docket, pp. 335 to 336; Exhibit "P-1", Docket, pp. 422 to 423.
[61] *Petition for Review*, Docket, pp. 10 to 28.

It was improper to impose the amount of ₱1,525,954.63 upon petitioner.

Indeed, Section 2.57.2(F) of Revenue Regulations (RR) No. 2-98,[62] as last amended by RR No. 11-2018,[63] requires that a creditable withholding tax be made on the gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset. Said provision reads:

> "SECTION 2.57.2 *Income payment subject to creditable withholding tax and rates prescribed thereon* — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
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> xxx xxx xxx
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> (F) ***Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset*** [formerly under letter (J)] — A creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent,/buyer, in accordance with the following schedule:

A. Where the seller/transferor is exempt from creditable withholding tax in accordance with Sec 2.57.5 of these regulations	Exempt
B. Upon the following values of real property, where the seller/transferor is habitually engaged in the real estate business:	
With a selling price of Five Hundred Thousand Pesos (P500,000.00) or less	1.5%

[62] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes

[63] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 2-98, as Amended, to Implement Further Amendments Introduced by Republic Act No. 10963, Otherwise Known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law," Relative to Withholding of Income Tax.

With a selling price of more than Five Hundred Thousand Pesos (P500,000.00) but not more than Two Million Pesos (P2,000,000.00)	3.0%
With a selling price of more than Two Million Pesos (P2,000,000.00)	5.0%
C. Where the seller/transferor is not habitually engaged in the real estate business	6.0%

Registration with the HLURB or HUDCC shall be sufficient for a seller/transferor to be considered as habitually engaged in the real estate business. If the seller/transferor is not registered with HLURB or HUDCC, he/it may prove that he/it is engaged in the real estate business by offering other satisfactory evidence (for example, he/it consummated during the preceding year at least six taxable real estate transactions, regardless of amount). Notwithstanding the foregoing, for purposes of these Regulations, banks shall not be considered as habitually engaged in the real estate business.

Gross selling price shall mean the consideration stated in the sales document or the fair market value determined in accordance with Section 6 (E) of the Code, whichever is higher. In an exchange, the fair market value of the property received in exchange shall be considered as the consideration.

xxx xxx xxx."

It must be emphasized, however, that the foregoing provision is *not* an absolute rule, or should *not* be applied to every sale, exchange or transfer of real property classified as ordinary asset. Pertinently, the same RR No. 2-98, as amended, provides instances where no creditable withholding tax should be made. Its Section 2.57.5(A) provides:

"Sec. 2.57.5. *Exemption from Withholding.* — **The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to** the following:

(A) National government agencies and **its instrumentalities**, including provincial, city, municipal governments and barangays except government-owned and controlled corporations.

xxx xxx xxx." *(Emphases added)*

Clearly, on the basis of the foregoing provision, the prescribed creditable withholding tax is not applicable to income payments made to, *inter alia*, government instrumentalities. Relative thereto, without doubt, as presently constituted, petitioner still remains an instrumentality of the national government.[64] This fact was even admitted by respondent in the the parties' *Joint Stipulation of Facts and Issues*.[65] *Apropos*, the Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof.[66]

Correspondingly, considering that petitioner is a government instrumentality and no creditable withholding tax may be imposed on income payments thereto, the imposition of surcharge, interest and compromise penalty, for the alleged late payment of EWT, is unwarranted.

In any event, even granting that petitioner cannot be considered as a government instrumentality and income payments to it should be subjected to creditable withholding taxes, it is still improper for the BIR or respondent to impose the subject surcharge, interest and compromise penalty, for the *"late payment of EWT"* on petitioner. This is simply because the latter is the seller/income recipient or the payee of the subject income, and not the payor thereof or the buyer. In this connection, it must be emphasized that in the withholding tax system, the payor of income is a separate entity that acts as a withholding agent on behalf of the government for the collection of taxes.[67] Thus, if at all, any penalty or addition to the supposed tax or taxes by reason of the late payment of EWT should be imposed on the buyer/income payor/withholding agent, which in this case is Ms. Rowena A. Jamaji, and *not* on the seller/income payee or recipient, *i.e.*, petitioner.

All told, the claimed amount of ₱1,525,954.63 constitutes erroneously or illegally paid interest, surcharge and compromise penalty, which is refundable under Sections 204 and 229 of the NIRC of 1997.

The claim for refund was duly substantiated.

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[64] Refer to Boy Scouts of the Philippines vs. Commission on Audit, G.R. No. 177131, June 7, 2011.
[65] Par. 1.1, Stipulation of Facts, JSFI, Docket, p. 333.
[66] Toshiba Information Equipment (Phils.), Inc. vs Commissioner of Internal Revenue, G.R. No. 157594, March 9, 2010.
[67] The Philippine Stock Exchange, Inc., et al. vs. Secretary of Finance, et al., G.R. No. 213860, July 5, 2022.

To prove the remittance to the BIR of the said erroneously or illegally collected interest, surcharge and compromise penalty, petitioner offered in evidence the following documents:

1. BIR Forms No. 0605.[68]

2. BIR Confirmation Advices both dated May 3, 2018;[69] and

3. Credit Advices with Ticket Nos. 11398[70] and 11394,[71] both dated May 22, 2018.

On the basis thereof, petitioner has sufficiently proven that it is entitled to a refund in the total amount of ₱1,525,954.63, representing the erroneously or illegally paid interest, surcharge and compromise penalty for the alleged late payment of EWT.

With the foregoing disquisitions, the Court finds no other compelling reason to address the other arguments and matters raised by the parties herein.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of **₱1,525,954.63**, representing surcharge, interest, and compromise penalty, on the alleged late payment of EWT erroneously paid or collected the BIR.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[68] Exhibits, P-24" and "P-28", Docket, pp. 471 and 475, respectively.
[69] Exhibits "P-27" and "P-31", Docket, pp. 474 and 478, respectively.
[70] Exhibit "P-26", Docket, p. 473.
[71] Exhibit "P-30, Docket, p. 477.

With all due respect, please see D.O.
CORAZON G. FERRER-FLORES
Associate Justice

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

BANGKO SENTRAL NG PILIPINAS, Petitioner,	**CTA CASE NO. 10278**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 1 1 2024 11:50 a.m.

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DISSENTING OPINION

FERRER-FLORES, J.:

With due respect to our esteemed colleague, Honorable Associate Justice Ma. Belen Ringpis-Liban, I am constrained to withhold my assent on the *ponencia*.

In the Decision, it was held that the Court of Tax Appeals (CTA) has jurisdiction to take cognizance over the Petition for Review. It was pointed out that Republic Act (R.A.) No. 1125, being the special law, prevails over Presidential Decree (P.D.) No. 242, a general law. Accordingly, following the rule on statutory construction involving a general and a special law, R.A. No. 1125, on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242.

I respectfully disagree.

In the case of *The Department of Energy vs. Court of Tax Appeals,*[1] the Supreme Court, citing *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*[2] (*PSALM* case), has categorically ruled to the contrary, to wit:

> ***Special Laws prevail over General Laws***
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> **P.D. No. 242, as incorporated in the Revised Administrative Code in Chapter 14, Book IV, should prevail as against laws defining the general jurisdiction of the CTA, *i.e.*, R.A. No. 1125, as amended, and the NIRC.** This is consistent with the fundamental rule that special laws prevail over general laws. P.D. No. 242 deals specifically with the resolution of disputes, claims, and controversies where the parties involved are the various departments, bureaus, offices, agencies, and instrumentalities of the government. **P.D. No. 242 should be read as an exception to the general rule set in R.A. No. 1125 and the NIRC that the CTA has jurisdiction over tax disputes involving laws administered by the BIR.**
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> The Court has defined a general law as "a law which applies *to all of the people* of the state or to *all of a particular class of persons* in the state, with equal force and obligation." In *Valera v. Tuason, et al.*, it was also described as "one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class." On the other hand, a special law is one which "applies to particular individuals in the state or to a particular section or portion of the state only" and which "relates to particular persons or things of a class." As the Court has consistently held, where there are two laws which appear to apply to the same subject and where one law is general and the other special, the law specially designed for the particular subject must prevail over the other. Stated more simply, the special law prevails over the general law. *Generalia specialibus non derogant.*
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> Here, the NIRC and R.A. No. 1125, and specifically their provisions on the jurisdiction of the CTA over tax disputes involving tax laws enforced by the BIR, should be read as general provisions governing the settlement of disputes involving tax claims. These provisions apply to the resolution of this general class of tax cases involving all persons, without exception. Stated more simply, they apply with equal force to *all persons* involved in disputes pertaining to *all tax claims* arising from *all tax laws* being implemented by the BIR.
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> In clear contrast, P.D. No. 242, as now embodied in the Revised Administrative Code, applies only to particular persons involved in a uniquely specific category of cases — disputes, claims, and controversies where all the parties are government entities. The Court's ruling in *City of Manila v. Teotico, Bagatsing v. Ramirez,* and other similar cases, dictate that an interpretation of P.D. No. 242 as a special law that functions as an exception to the general rule on the jurisdiction of courts, such as the CTA, to resolve disputes. Where the dispute involves government entities on

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[1] G.R. No. 260912, August 12, 2022.
[2] G.R. No. 198146, August 8, 2017.

opposing sides, P.D. No. 242, as embodied in the Revised Administrative Code, determines, in the first instance, the mode of dispute resolution.

In ruling that P.D. No. 242 is the special law (as opposed to R.A. No. 1125 and the NIRC), the Court also takes into consideration the rationale for the enactment of P.D. No. 242. The First and Second Whereas Clauses of P.D. No. 242 provide:

> "WHEREAS, it is necessary in the public interest to provide for the administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations, **to avoid litigation in court where government lawyers appear for such litigants to espouse and protect their respective interests although, in the ultimate analysis, there is but one real party in interest the Government itself in such litigations**;
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> WHEREAS, court cases involving the said government entities and instrumentalities have needlessly 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"; (emphasis supplied)

In the performance of our Constitutional duty to interpret the laws, it is essential that the Court do so with due regard to legislative intent. Given the purpose animating the enactment of P.D. No. 242, the Court must read it as a special law intended to govern the resolution of disputes involving government agencies. It is only by reading P.D. No. 242 as an exception to the general rule governing the jurisdiction of the CTA over tax disputes that the Court will be able to respect and uphold the legislative intent to submit all inter-governmental disputes to the jurisdiction of the Executive in the pursuit of avoiding litigation in cases where the opposing parties ultimately represent the government as the sole real party-in-interest. A contrary reading of P.D. No. 242 would defeat the purpose for its enactment as an entire class of cases (*i.e.*, tax cases under the jurisdiction of the CTA) would operate outside its ambit, thereby significantly limiting the Government's ability to resolve internal disputes and further clogging the CTA's dockets.

In *Philippine National Oil Company v. Court of Appeals (PNOC v. CA)*, the Court found that R.A. No. 1125 should be read as an exception to P.D. No. 242. However, it cannot be overemphasized that *PNOC v. CA* did not involve the actual application of the P.D. No. 242 as we ultimately ruled in that case that P.D. No. 242 does not govern the dispute considering that it involved a private party and was therefore not a case involving solely the government. Given this, our elucidations on R.A. No. 1125 and P.D. No. 242 in that case was obiter. As for *Commissioner of Internal Revenue v. Secretary of Justice and the Philippine Amusement and Gaming Corporation*, which relied on our obiter in *PNOC*, the case was decided prior to *PSALM*, and **it was only in *PSALM* that the Court made the definitive and binding pronouncement that P.D. No. 242 is a special law and must be read as a carve out from the general jurisdiction of the**

CTA over tax cases. *PSALM* operates as *stare decisis* in this case and must, therefore, govern our ruling. *(Emphasis supplied)*

Based on the foregoing, with the promulgation of the *PSALM* case on August 8, 2017, P.D. No. 242 shall be read as the exception to the general jurisdiction of the CTA over tax cases. Considering that the instant Petition for Review was filed by the BSP on May 20, 2020, after the promulgation of the *PSALM* case, P.D. No. 242 should be considered as the prevailing law in determining whether the CTA has jurisdiction over the dispute.

Nonetheless, in the *ponencia*, it was held that, even supposing P.D. No. 242 should prevail over R.A. No. 1125, the present dispute would still not be covered by P.D. No. 242 since the BSP is neither under the Executive Branch of the government nor under the President's supervision and control to fall within the realm of P.D. No. 242.

To this point, I respectfully beg to differ.

Section 1 of P.D. No. 242 provides:

> SECTION 1. Provisions of law to the contrary notwithstanding, **all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and <u>instrumentalities of the National Government</u>, including government-owned or controlled corporations but excluding 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. *(Emphasis supplied)*

In order for P.D. No. 242 to apply, it is necessary to ascertain the legal status of the parties to the dispute to determine whether the same is within the coverage of said law.

There is no dispute that the BIR is among those enumerated in P.D. No. 242. The issue lies with the legal status of BSP as a government entity. After evaluation of the facts, applicable laws, and jurisprudence, it is my position that the BSP is a **government instrumentality.**

Section 2(10) of the Introductory Provisions of Executive Order (E.O.) No. 292, otherwise known as the Administrative Code of 1987, defines a *government instrumentality* as follows:

> SECTION 2. General Terms Defined. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

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> (10) "**Instrumentality**" refers to **any agency of the National Government, not integrated within the department framework** vested within special functions or jurisdiction by law, **endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter**. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations. *(Emphasis supplied)*

In relation thereto, Sections 1 and 5 of R.A. No. 7653 (The New Central Bank Act) provide as follows:

> SECTION 1. *Declaration of Policy.* - The State shall maintain a central monetary authority that shall **function and operate as an independent and accountable body corporate** in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, **the central monetary authority established under this Act, while being a government-owned corporation, shall enjoy fiscal and administrative autonomy**.
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> SECTION 5. ***Corporate Powers.*** — The Bangko Sentral is hereby authorized to adopt, alter, and use a corporate seal which shall be judicially noticed; to enter into contracts; to lease or own real and personal property, and to sell or otherwise dispose of the same; to sue and be sued; and otherwise to do and perform any and all things that may be necessary or proper to carry out the purposes of this Act.
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> The Bangko Sentral may acquire and hold such assets and incur such liabilities in connection with its operations authorized by the provisions of this Act, or as are essential to the proper conduct of such operations.
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> The Bangko Sentral may compromise, condone or release, in whole or in part, any claim of or settled liability to the Bangko Sentral, regardless of the amount involved, under such terms and conditions as may be prescribed by the Monetary Board to protect the interests of the Bangko Sentral. *(Emphasis supplied)*

Based on the foregoing, the BSP, granted with corporate powers, functions and operates as an independent and accountable body corporate. Moreover, while it is a government-owned corporation, the BSP enjoys fiscal and administrative autonomy. Thus, the BSP falls within the definition of an instrumentality under the Administrative Code of 1987.

In the recent jurisprudence, *Bangko Sentral ng Pilipinas vs. Commission on Audit* (***BSP*** **case**),[3] the Supreme Court shed some light as to the legal status of the BSP and categorically ruled that the BSP is not a GOCC,

[3] G.R. No. 210314, October 12, 2021.

applying the parameters set in the case of *Manila International Airport Authority (MIAA) vs. Court of Appeals*,[4] promulgated on July 20, 2006, (***2006 MIAA* case**), *viz:*

> In the 2006 case of *Manila International Airport Authority v. Court of Appeals*, the Court had the occasion to interpret and apply the foregoing definition in the Administrative Code when it was confronted with the question of whether Manila International Airport Authority (MIAA) is a GOCC and is thus not exempt from real estate tax. In resolving the issue, the Court explained that a GOCC must be organized as a stock or non-stock corporation, as expressly stated in the definition. It further explained that under the Corporation Code, to be classified as a stock corporation, an entity must have capital stock divided into shares and must be authorized to distribute dividends and allotments of surplus and profits to its stockholders. On the other hand, to be classified as a non-stock corporation, it must have members and must not distribute any part of its income to said members. Since MIAA is not organized as a stock or non-stock corporation, the Court held that it is not a GOCC:
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> Applying the parameters in *Manila International Airport Authority v. Court of Appeals*, the Court has since disqualified many entities from being classified as GOCCs, including the Philippine Fisheries Development Authority, the Philippine Ports Authority, the Government Service Insurance System, the Philippine Reclamation Authority, the Manila Economic & Cultural Office, the Mactan-Cebu International Airport Authority, the Bases Conversion and Development Authority, the Executive Committee of the Metro Manila Film Festival, and the Light Rail Transit Authority.
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> After applying the same parameters, we find that the BSP does not qualify as a GOCC as defined under the Administrative Code and RA 7656.
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> **First**, the BSP is not organized as a stock corporation. The capitalization of the BSP is provided under Section 2 of RA 7653, as amended by RA 11211:
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> Thus, while the BSP has capital under Section 2 of the BSP Charter, it does not have capital stock or share capital. Further, its capital is not divided into shares of stocks. There are no stockholders or voting shares. Hence, the BSP cannot be classified as a stock corporation.
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> **Second**, the BSP is not a non-stock corporation. It does not have members. Even assuming that the government may be considered as the sole member of the BSP, this will not make the BSP a non-stock corporation because the BSP Charter mandates it to remit 50% of its net profits to the National Treasury, in conflict with the provision that non-stock corporations do not distribute any part of their income to their members.
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[4] G.R. No. 155650, July 20, 2006.

> In fine, following the definition of a GOCC under the law and in line with settled jurisprudence, the BSP does not qualify as a GOCC as defined under RA 7656. Incidentally, this was also the impression of the Court in *Manila International Airport Authority v. Court of Appeals.*

In the *BSP* case, the Supreme Court further expounded that the records of the Constitutional Commission and the legislative deliberations on R.A. No. 7653 reveal the intent to exclude the BSP from the general category of GOCCs, specifically, that the BSP *"is owned by the government, but not quite government-owned or -controlled corporation as defined now by various law[s]"*. Nonetheless, the above recent jurisprudence did not categorically rule on the legal status of the BSP but only held that it is not a GOCC.

Referring now to the *2006 MIAA* case, it is noted that the Supreme Court, after concluding that MIAA is not a GOCC, proceeded to elucidate on the legal status of MIAA within the National Government, to wit:

> Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?
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> MIAA is a **government instrumentality vested with corporate powers to perform efficiently its governmental functions**. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government **"instrumentality"** as follows:
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> > SEC. 2. *General Terms Defined.* — x x x
> >
> > (10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy, usually through a charter. x x x (Emphasis supplied)
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> **When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation**, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."
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> Likewise, **when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the**

> **department framework**. The MIAA Charter expressly states that transforming MIAA into a 'separate and autonomous body' will make its operation more 'financially viable.'

In the said case, the Supreme Court ruled that the MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. However, even if it is operationally autonomous, it still remains part of the National Government machinery.

Similarly, the BSP is a government instrumentality which is granted with corporate powers[5] and is enjoying fiscal and administrative autonomy.[6] Nonetheless, even if it enjoys fiscal and administrative autonomy, the BSP, as an instrumentality, still remains part of the National Government machinery, as also aptly pointed out by the Honorable Supreme Court Justice Amy Lazaro-Javier in her Separate Concurring Opinion in the *BSP* case.

Thus, the BSP is a government instrumentality. In fact, in its petition, the BSP refers to itself as *"a government instrumentality created and operating by virtue of R.A. No. 7653"*.

Considering all the foregoing, since the instant case involves BSP, a government instrumentality forming part of the National Government, and the BIR, another government agency, it is respectfully submitted that the CTA has no jurisdiction over the instant case.

All told, I VOTE to DISMISS the Petition for Review filed by the BSP for lack of jurisdiction.

CORAZON G. FERRER-FLORES
Associate Justice

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[5] Section 5 of R.A. No. 7653.
[6] Section 1 of R.A. No. 7653.