REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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COMMISSION ON ELECTIONS, represented by ATTY. MARIA NORINA S. TANGARO-CASINGAL, Director IV of the LAW DEPARTMENT,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE ,
Respondent.

CTA EB No. 1581
(CTA Case No. 8929)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

COMMISSIONS ON ELECTIONS, represented by ATTY. MARIA NORINA S. TANGARO-CASINGAL, Acting Director of the Law Department,
Respondent.

CTA EB No. 1660
(CTA Case No. 8929)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
MAY 20 2019 3:35pm

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RESOLUTION

UY, *J.*:

For resolution is the **"MOTION FOR RECONSIDERATION (On the Decision Dated 17 January 2019)"** filed by the Commission on

Elections (COMELEC) on February 8, 2019,[1] with the **"COMMENT/OPPOSITION (To Petitioner's Motion for Reconsideration on the Decision dated 17 January 2019)"** filed by the Commissioner of Internal Revenue (CIR) on March 14, 2019,[2] praying for the reconsideration of this Court *En Banc*'s Decision dated January 17, 2019, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* filed by COMELEC in CTA EB No. 1581 is **DISMISSED**, considering that the required affirmative votes of five (5) members of this Court *En Banc* were not obtained, pursuant to Section 2 of RA No. 1125, as amended by RA No. 9503, in relation to Section 3, Rule 2 of the RRCTA; while the *Petition for Review* filed by the CIR in CTA EB No. 1660 is **DENIED** for lack of merit.
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> Accordingly, the assailed Amended Decision dated January 3, 2017, and the Resolution dated May 9, 2017, both rendered by the Court in Division in CTA Case No. 8929, are **AFFIRMED**.
>
> **SO ORDERED**."

In the *Motion for Reconsideration*, the COMELEC avers that in the interest of justice, this Court *En Banc* may relax its rule requiring the filing of a motion for reconsideration of an amended decision; and that the issue in this case, as a matter of fact, has an overreaching societal significance or one which has transcendental value so as to merit the leniency of this Court *En Banc* in the application of its rules in reversing the decision of a Division.

On the other hand, in his *Comment/Opposition*, the CIR contends that as correctly held by this Court *En Banc*, the Amended Decision in CTA Case No. 8929 has already attained finality as far the CIR is concerned, for failure of COMELEC to file a *Motion for Reconsideration*; that the assessment is valid and correct and the COMELEC has the burden of proof to impugn its validity; and that

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[1] EB Docket (CTA EB No. 1581), pp. 256 to 262.
[2] EB Docket (CTA EB No. 1581), pp. 305 to 307.

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taxes are the lifeblood of the government and should be collected without unnecessary delay.

THE COURT *EN BANC*'S RULING

The COMELEC's *Motion for Reconsideration* must be denied for lack of merit.

Procedural rules are designed to facilitate adjudication of cases, thus courts and litigants alike are enjoined to abide strictly by the rules.

The COMELEC argues that the filing of a motion for reconsideration on the amended decision, and the voting requirement to reverse a decision of a Court in Division, are procedural and may be relaxed by this Court.

We disagree.

In *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*,[3] the Supreme Court held:

> "xxx. The Court cannot simply grant the plea of the CIR that the procedural rules be relaxed based on the general averment of the interest of substantive justice. **It should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. Procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. <u>While in certain instances, the Court allows a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity</u>. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances.** While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance

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[3] G.R No. 157594, March 10, 2010.

> with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice." *(Emphasis and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, as a general rule, procedural rules should be observed strictly. To invoke liberality in the application thereof, demonstrable merit must be shown, and under justifiable causes and circumstances only.

In this case, the COMELEC has not shown demonstrable merit, and even failed to prove that there are justifiable causes and circumstances obtaining in this case to justify the relaxation of the subject rules of procedure. Such being the case, the COMELEC's plea of relaxing the rules cannot be accorded favorable consideration.

Although the parties in this case are both government agencies, the PSALM case is not applicable herein.

The COMELEC avers that while it missed the point in the case of *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*[4] ("*PSALM* case"), the settlement of the case was one of its objective in the early years of this controversy. Allegedly, the COMELEC did not fail to cooperate with the proceedings of the Bureau of Internal Revenue (BIR) from the examination of Smartmatic Sahi and Avante accounts; and that such was a clear proof that since the start, the COMELEC was entertaining the idea and as it in fact opened with the BIR, the possibility of settling the case because COMELEC's payment will result only to a transfer of government fund from one agency to another.

According to the COMELEC, should this case be referred to the Department of Justice in accordance with the doctrine laid down in the *PSALM* case, the COMELEC and the CIR may arrive at a mutually beneficial agreement.

However, the *PSALM* case is not applicable to the instant case. Indeed, in the *PSALM* case, the Supreme Court held as follows:

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

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

Based on the foregoing, it is clear that all disputes and claims solely between government agencies and offices, including government-owned and -controlled corporations, shall be administratively settled; otherwise, such action would be considered premature and not ripe for judicial determination.

It should be noted, however, that in the same case, the High Court said that *"PD 242 is now embodied in Chapter 14, Book IV of EO No. 292, otherwise known as the Administrative Code of 1987, which took effect on November 24, 1989."*

Thus, in the final determination of which provision of law should be applied, reference must now be made to the pertinent provisions of Executive Order (EO) No. 292, one of which is as follows:

"BOOK IV – THE EXECUTIVE BRANCH

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Chapter 14 - Controversies Among Government Offices and Corporations

> ***SECTION 66.*** *How Settled.* — All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. **This Chapter shall, however, not apply to disputes involving** the Congress, the Supreme Court, **the Constitutional Commissions**, and local governments." *(Emphasis and underscoring supplied.)*

Clearly from the foregoing provision, Constitutional Commissions, such as the COMELEC, are expressly **excluded** from the coverage of the requirement for administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities.

A comparison of the subject provisions of PD No. 242 and EO No. 292 show that there is an irreconcilable difference between the two, specifically with regard to its coverage, to wit:

PD No. 242	EO No. 292
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,	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

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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.	provided in this Chapter. **This Chapter shall, however, not apply to disputes involving** the Congress, the Supreme Court, **the Constitutional Commissions**, and local governments." *(Emphasis and underscoring supplied.)*

It is noteworthy that under PD No. 242, the requirement for the administrative settlement or adjudication of disputes, claims and controversies *included* in the coverage thereof - "constitutional offices", which term encompasses the COMELEC.

However, under EO No. 292, the "Constitutional Commissions", which undoubtedly includes the COMELEC, were specifically *excluded in* the coverage. Thus, the subject provisions of PD No. 242 and EO No. 292 are clearly inconsistent and incompatible and cannot be reconciled or harmonized, to give effect to both provisions at the same time.

In *Valdez vs. Tuason*,[5] the Supreme Court said:

> "We are not oblivious of the well-known rule of law that repeals by implication are not favored. Nevertheless **when there is a plain, unavoidable, and irreconcilable repugnancy between two laws the later expression of the Legislature will must be given effect. It is axiomatic in the science of jurisprudence that two inconsistent statutes cannot co-exist in one jurisdiction with reference to the same subject-matter.**
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> The most powerful implication of repeal noted by legal commentators is that which arises when the later two laws is expressed in the form of a universal negative. **The repugnance of two statutes is more readily seen when the later Act is in the form of a negative proposition than when both laws are stated in the affirmative.** Indeed most of the discussion found in the books on the question whether one law impliedly repeals

[5] G.R. No. 14957, March 16, 1920.

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> another is concerned with the interpretation of affirmative laws. (Sutherland, Statutory Construction, 2d ed., sec. 248.) **There is a clear distinction between affirmative and negative statutes in regard to their repealing effects upon prior legislation, which may be expressed by saying that while an affirmative statute does not impliedly repeal the prior law unless an intention to effect the repeal is manifest, <u>a negative statute repeals all conflicting provisions</u> unless the contrary intention is disclosed.** In *State vs. Commissioners of Washoe County* (22 Nev., 203, 210), the court said:
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> > One affirmative statute will not repeal another, unless there is an absolute conflict between them, or it can be ascertained in some manner that a repeal was intended. **But where the later act is expressed in negative terms, the principle is different. <u>Negative statutes are mandatory, and must be presumed to have been intended as a repeal of all conflicting provisions</u>, unless the contrary can be clearly seen.**" *(Emphases and underscoring supplied)*

In view of the comparison shown above, it can be readily seen that there is a plain, unavoidable, and irreconcilable repugnancy between Section 1 of PD No. 242 and Section 66, Chapter 14, Book IV of EO No. 292. The former mandates the observance of administrative settlement or adjudication of disputes, claims and controversies, involving, *inter alia*, constitutional offices; while the latter explicitly says otherwise.

And such repugnancy may not only be seen through the said comparison, but also in that in Section 66, Chapter 14, Book IV of EO No. 292, the later statute, the wordings thereof are couched in the form of a negative proposition, to wit: *"This Chapter shall, however,* ***<u>not</u> apply*** *to disputes* ***involving...the Constitutional Commissions****..."* As such, it is mandatory,[6] and it is presumed to have been intended as a repeal of all conflicting provisions.

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[6] ...negative (prohibitory and exclusive words or terms are indicative of the legislative intent that the statute is to be mandatory... (*In the matter of the Adoption of the minors Maria Lualhati Magpayo and Amada Magpayo. Mcgee vs. Republic of the Philippines*, G.R. No. L-5387, April 27, 1954, citing Crawford, Statutory Construction, sec. 263, p. 523.)

Correspondingly, the logical and inevitable conclusion is that there was a repeal of Section 1, PD No. 242, by Section 66, Chapter 14, Book IV, EO No. 292, insofar as the observance of administrative settlement or adjudication of disputes, claims and controversies involving constitutional offices is concerned.

As a consequence, the application of Section 27 of the Final Provisions of EO No. 292, is called for, to wit:

> "SECTION 27. *Repealing Clause.* — **All** laws, **decrees,** orders, rules and regulations, **<u>or portions thereof,</u> inconsistent with this Code are hereby <u>repealed or modified accordingly</u>.**" *(Emphasis and underscoring supplied)*

Such being the case, any dispute, claims and controversies solely between a constitutional office, on one hand, and other government offices or agencies (which are not expressly excluded from the coverage of the law), on the other, need not go through the process required by the Section 1 of PD No. 242 and Section 66, Chapter 14, Book IV of EO No. 292.

WHEREFORE, in light of the foregoing considerations, COMELEC's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)

ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(I maintain my Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

COMMISSION ON ELECTIONS, represented by ATTY. MARIA NORINA S. TANGARO-CASINGAL, Director IV of the Law Department,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1581
(CTA Case No. 8929)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

COMMISSION ON ELECTIONS, represented by ATTY. MARIA NORINA S. TANGARO-CASINGAL, Acting Director of the Law Department,
Respondent.

CTA EB NO. 1660
(CTA Case No. 8929)

Present:

DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

MAY 20 2019 3:36pm

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

After carefully perusing the *ponencia's* eloquent disquisition, I concur that any dispute, claims and controversies solely between a constitutional office, such as the Commission on Elections

(COMELEC), on one hand, and another government agency or office, such as the Bureau of Internal Revenue (BIR), need not be administratively settled or adjudicated in the manner provided under Presidential Decree (PD) No. 242, as embodied in Chapter 14, Book IV of Executive Order (EO) No. 292.

With due respect, however, I maintain my position that the Court *En Banc* may take cognizance of the Petition for Review filed by COMELEC in CTA EB No. 1581. To reiterate, COMELEC correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petition for Review to assail the Court in Division's Amended Decision. The Amended Decision constitutes a resolution of COMELEC's Motion for Reconsideration of the Court in Division's Decision dated August 2, 2016. COMELEC need not file another Motion for Reconsideration to assail the Amended Decision which already passed upon its arguments. **A motion for reconsideration by COMELEC assailing the Court in Division's Amended Decision would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals.**

The foregoing disquisition notwithstanding, I submit that both the CIR and the COMELEC failed to present any compelling reason for the Court *En Banc* to modify the Court in Division's Amended Decision.

All told, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice