



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 6, 2021** which reads as follows:*

“G.R. No. 250748 (*Philippine Mining Development Corporation, petitioner v. The Commissioner of Internal Revenue and the Officer-In-Charge-Assistant Commissioner, Large Taxpayers Service, in their official capacities as officers of the Bureau of Internal Revenue, respondents*).

This is an appeal by *certiorari* under Rule 45 seeking to reverse and set aside the October 16, 2019 Decision¹ and December 6, 2019 Resolution² of the Court of Tax Appeals (*CTA*) *En Banc* in CTA EB No. 1900. The *CTA En Banc* affirmed the April 6, 2018 Decision³ and July 5, 2018 Resolution⁴ of the *CTA* Second Division (*CTA Division*) in CTA Case No. 9292 which dismissed the Petition for Review⁵ filed by petitioner Philippine Mining Development Corporation (*PMDC*) for lack of jurisdiction over the subject matter of the case.

- over – eighteen (18) pages ...

272

¹ *Rollo*, pp. 43-61; penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario, Associate Justice Juanito C. Castaneda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Ma. Belen M. Ringpis-Liban, Associate Justice Catherine T. Manahan, Associate Justice Jean Marie A. Bacorro-Villena, and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

² *Id.* at 63-67; penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario, Associate Justice Juanito C. Castaneda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Ma. Belen M. Ringpis-Liban, Associate Justice Catherine T. Manahan, and Associate Justice Jean Marie A. Bacorro-Villena, concurring; Associate Justice Maria Rowena Modesto-San Pedro, dissenting.

³ *Id.* at 151-164; penned by Associate Justice Catherine T. Manahan with Associate Justice Juanito C. Castaneda, Jr., and Associate Justice Caesar A. Casanova, concurring.

⁴ *Id.* at 186-191.

⁵ *Id.* at 68-85.

Antecedents

PMDC is a government-owned and-controlled corporation (*GOCC*), formerly known as the Natural Resources Mining Development Corporation. It was incorporated on July 4, 2003, primarily to conduct and carry on the business of exploring, developing, mining, concentrating, converting, smelting, treating, and otherwise developing, producing, and dealing in gold, silver, copper, iron, and any and all kinds of minerals, mineral deposits, substances, and mineral resource.⁶ It is an agency attached to the Department of Environment and Natural Resources (*DENR*).⁷

The Bureau of Internal Revenue (*BIR*) conducted an assessment of PMDC's tax liabilities for calendar year 2006. On March 14, 2016, PMDC filed before the CTA a petition for review seeking to nullify the following, for lack of factual and legal bases and failure to comply with due process: (a) the assessment issued against PMDC by the BIR for alleged deficiency income tax for calendar year 2006; (b) the Warrant of Distraint and Levy issued by the BIR against PMDC on August 17, 2011; and (c) the denial by the BIR of PMDC's Motion for Reinvestigation.⁸

Trial ensued before the CTA Division. After ruling on the formal offer of exhibits of respondents Commissioner of Internal Revenue and Officer-in-Charge (*OIC*)-Assistant Commissioner of the BIR Large Taxpayers Service (*LTS*) during the hearing on August 30, 2017, the CTA Division required the parties to submit their respective memoranda within 30 days after which the case would be submitted for decision.⁹

On August 8, 2017, while the case was still pending before the CTA Division, the Court rendered its decision in *Power Sector Assets and Liabilities Management Corporation (PSALM) v. Commissioner of Internal Revenue (CIR)*¹⁰ (*PSALM Case*), wherein it ruled that pursuant to the provisions of Presidential Decree (*P.D.*) No. 242,¹¹ all

- over -

272

⁶ Id. at 69-70.

⁷ Id. at 118.

⁸ Id. at 12.

⁹ Id.

¹⁰ 815 Phil. 966 (2017).

¹¹ 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 (July 9, 1973).

disputes, claims, and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including GOCCs, 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.¹²

CTA Division Ruling

In its April 6, 2018 Decision,¹³ the CTA Division dismissed the petition of PMDC for lack of jurisdiction, adhering to the pronouncements of this Court in the *PSALM* Case. According to the CTA Division, unless and until modified by the Supreme Court *En Banc*, the interpretation of P.D. No. 242 in the *PSALM* Case should be applied in determining the proper forum with jurisdiction to resolve disputes, claims, and controversies between or among the departments, bureaus, offices, agencies, and instrumentalities of the National Government.¹⁴ Considering that the present case involved the PMDC, a GOCC, on one hand, and the CIR, in his official capacity as Head of the BIR, on the other hand, the CTA Division considered the present case as a dispute solely between two government agencies over which the CTA had no jurisdiction.

Although the CTA Division acknowledged that the petition was filed by PMDC on March 4, 2016, prior to the promulgation of the *PSALM* Case on August 8, 2017, it did not insist on exercising jurisdiction over the former case. Citing another decision of the Court, *CIR v. Secretary of Justice and Philippine Amusement and Gaming Corporation (PAGCOR)*¹⁵ (*PAGCOR Case*), the CTA Division adjudged:

Applying the doctrine laid down in the *PAGCOR* case, when an office [as the Department of Justice] 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

- over -

272

¹² *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 10, at 1001.

¹³ *Rollo*, pp. 151-164.

¹⁴ *Id.* at 161.

¹⁵ 799 Phil. 13 (2016).

has been subsequently vested. Thus, this Court, having had ample opportunity to abide by the ruling in the PSALM case, has no jurisdiction over the instant petition filed by PMDC.¹⁶

Aggrieved, PMDC filed a motion for reconsideration, which the CTA Division denied in its July 5, 2018 Resolution.¹⁷

This prompted PMDC to file a petition for review with the CTA *En Banc*.

CTA En Banc Ruling

In its October 16, 2019 Decision,¹⁸ the CTA *En Banc* found no compelling reason to disturb the findings of the CTA Division as it was supported by jurisprudence and evidence on record.¹⁹ The *fallo* of the CTA *En Banc* decision reads:

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

SO ORDERED.²⁰

In its December 6, 2019 Resolution,²¹ majority of the CTA *En Banc* denied the motion for reconsideration of PMDC for lack of merit. CTA Associate Justice Maria Rowena Modesto-San Pedro dissented, voting to grant said motion and to reverse the October 16, 2019 Decision.²² She reasoned that P.D. No. 242, a general law that deals with the administrative settlement of disputes solely between or among government entities, must give way to Republic Act (*R.A.*) No. 9282,²³ a specialized law enacted to precisely deal with tax issues and controversies. It was only logical for the CTA to have exclusive jurisdiction to decide such matters since it has already developed the

- over -

272

¹⁶ *Rollo*, p. 163.

¹⁷ *Id.* at 186-191.

¹⁸ *Id.* at 43-61.

¹⁹ *Id.* at 59.

²⁰ *Id.* at 60.

²¹ *Id.* at 63-67.

²² *Id.* at 43-61.

²³ 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 (March 30, 2004).

necessary expertise on the subject of taxation as it is a specialized court dedicated exclusively to the study and resolution of tax problems. In addition, she opined that not all controversies solely between or among government entities fall under the provisions of P.D. No. 242. Disputes that are subject to administrative settlement under P.D. No. 242 “must relate to the interpretation and application of statutes, contracts or agreements, or any other cases of similar nature,” to which tax disputes and controversies are neither similar or analogous.

Hence, PMDC seeks recourse from this Court through the present petition for review.

Issue

PMDC submits the lone issue of whether the CTA *En Banc* erred in affirming the CTA Division’s decision declaring that the CTA has no jurisdiction over the case.

Primarily, PMDC avers that the *PSALM* Case does not squarely apply to the present petition as the factual milieu and the applicable remedy in the former are different from those in the latter. The *PSALM* Case did not involve a tax assessment protest, but the enforcement and implementation of a memorandum of agreement (*MOA*) among government agencies, particularly, *PSALM*, National Power Corporation (*NPC*), and the BIR. It was an original action wherein the DOJ was asked to settle the claim of *PSALM* against the BIR for the amount of Value-Added Tax (*VAT*) the former had remitted to the latter, under protest, in compliance with the *MOA*. It raised a pure question of law as it did not challenge the mathematical computation of the assessed *VAT* deficiency by the BIR, but rather the imposition of *VAT* by the BIR on the proceeds of the sale of two power plants by *PSALM* to private entities pursuant to its government mandate.²⁴

PMDC argues that, in contrast, the antecedents of the instant case show that it does not only involve a question of law, as PMDC is protesting the assessment on several other grounds, including the amount of deficiency *VAT* assessed. It invokes Section 7 of R.A. No. 1125, which states that it is the CTA, and not the Secretary of Justice, which has exclusive appellate jurisdiction to review by appeal the CIR’s decision in cases involving disputed assessments, refunds of

- over -

272

²⁴ *Rollo*, pp. 16-21.

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 administered by the BIR.²⁵

Even assuming that pursuant to the *PSALM* Case, the CTA now has no jurisdiction to review tax cases between the BIR and other government offices, agencies, and instrumentalities, including GOCCs, PMDC contends that this does not warrant the automatic dismissal of this case since it was filed prior to the promulgation of the *PSALM* Case, when the prevailing interpretation of the law was that the CTA had exclusive appellate jurisdiction to review by appeal the CIR's decision in cases of disputed assessments in all instances. The reversal of the interpretation in the *PSALM* Case cannot be given retroactive effect to the prejudice of parties who had relied on the earlier interpretation. In addition, PMDC asserts that the CTA Division herein had already received the parties' evidence even before the Court rendered its decision in the *PSALM* Case, and the only thing left for it was to decide the case. Instead of referring the case to the DOJ where the parties would be required to re-litigate the case, it would have been proper for the CTA Division to already decide the substantive issues raised in PMDC's petition for review so as not to further delay its disposition. PMDC points out that, in the *PSALM* Case itself, the Court no longer remanded the case to the DOJ for adjudication and proceeded to rule on the substantive issue raised therein as to whether the sale by PSALM of the power plants was subject to VAT.²⁶

PMDC lastly posits that the issues raised in this case require technical knowledge and, thus, should be handled by the CTA which has specialization over the subject matter of the controversy.²⁷

Citing the *PSALM* Case, respondents CIR and OIC-Assistant Commissioner, LTS, maintain that the purpose of P.D. No. 242 is to provide for the speedy and efficient administrative settlement or adjudication of disputes solely between government offices or agencies under the Executive Branch, as well as to filter cases to lessen the clogged dockets of the courts. It was held in the same case that the provisions of P.D. No. 242 cover all disputes, claims, and controversies – without any exception.²⁸ According to respondents,

- over -
272

²⁵ Id. at 21-30.

²⁶ Id. at 30-33.

²⁷ Id. at 33.

²⁸ *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 10, at 994.

the CTA was correct in ruling that it had no jurisdiction over PMDC's petition for review because it had been clearly adjudged in the *PSALM Case* that intra-governmental disputes must be settled administratively, including the CIR's assessment against a GOCC. Respondents further refer to the declaration in the *PSALM Case* that the President's constitutional power of control over the Executive Branch cannot be diminished by the CTA. If two executive offices or agencies cannot agree, it is only proper and logical that the President, as the sole Executive who, under the Constitution has control over both offices or agencies in dispute, shall resolve the dispute instead of the courts.²⁹

The Court's Ruling

The Court resolves to grant the instant petition. While the *PSALM Case*, as the prevailing jurisprudence, has already settled that it is indeed the Secretary of Justice who has jurisdiction over all disputes, claims, and controversies solely between or among departments, bureaus, offices, agencies and instrumentalities of the National Government, it cannot be applied retroactively, to the prejudice of parties who have relied on the previous interpretation reversed by the *PSALM Case*.

The Secretary of Justice has jurisdiction over the case.

The crux of the present controversy is the conflict between the provisions on jurisdiction under P.D. No. 242,³⁰ which were subsequently embodied in the Administrative Code of 1987,³¹ *vis-a-vis* those under the NIRC and R.A. No. 1125,³² as amended by R.A. No. 9282,³³ when involving cases of tax disputes solely between or among the CIR and other government entities.

Pertinent provisions of P.D. No. 242 read:

Section 1. Provisions of law to the contrary notwithstanding, **all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies**

- over -

272

²⁹ Id. at 998.

³⁰ Supra note 11.

³¹ Executive Order No. 292 was issued on July 25, 1987 and took effect on August 3, 1988, a year after its publication on the Official Gazette on August 3, 1987.

³² An Act Creating the Court of Tax Appeals (June 16, 1954).

³³ Supra note 23.

and instrumentalities of the National Government, 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.

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

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

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

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

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

The aforequoted provisions have been incorporated into Book IV, Chapter 14 of the Administrative Code of 1987 on Controversies Among Government Offices and Corporation which mandate:

Section 66. *How Settled.* – **All disputes, claims and controversies, solely between or among 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.

Section 67. *Disputes Involving Questions of Law.* – All cases **involving only questions of law** shall be submitted to and settled or adjudicated by the **Secretary of Justice** as Attorney-General of the National Government and as ex officio legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.

Section 68. *Disputes Involving Questions of Fact and Law.* – Cases involving **mixed questions of law and of fact or only factual issues** shall be submitted to and settled or adjudicated by:

(1) The **Solicitor General**, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and

(2) The **Secretary of Justice**, in all other cases not falling under paragraph (1). (emphases supplied)

Meanwhile, Sec. 4 of the NIRC, in relation to Sec. 7(a) of R.A. No. 1125, as amended, provides, to wit:

Section 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.**

Section 7(a) of R.A. No. 1125, as amended:

Sec. 7. *Jurisdiction.* – The CTA shall exercise:

(a) **Exclusive appellate jurisdiction** to review by appeal, as herein provided:

- over -

(1) **Decisions of the Commissioner of Internal Revenue** in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(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[.]

At the outset, it is emphasized that issues as regards jurisdiction over disputes and controversies involving tax as well as customs duty among departments, bureaus, offices, agencies, and instrumentalities of the National Government have been repeatedly submitted for resolution by the Court.

As held in *Development Bank of the Philippines v. Court of Appeals*,³⁴ between P.D. No. 242 and R.A. No. 1125, P.D. No. 242 vests the CTA with exclusive appellate jurisdiction over disputes involving customs duties since it is the latest expression of legislative will.³⁵ However, in *Philippine National Oil Company (PNOC) v. Court of Appeals*³⁶ (*PNOC Case*), the Court ruled that P.D. No. 242, a general law, should not affect the jurisdiction of the CTA over tax disputes as provided under R.A. No. 1125, a special law. The fact that P.D. No. 242 is the more recent law is not significant. Disputes, claims, and controversies falling under Sec. 7 of R.A. No. 1125, even though solely among government offices, agencies, and instrumentalities, including GOCCs, remain in the exclusive appellate jurisdiction of the CTA. The Court reiterated in the *PAGCOR Case*³⁷ that R.A. No. 1125, a special law, constitutes an exception to P.D. No. 242, a general law. It further held that the Secretary of Justice should have adhered to the *PNOC Case* by desisting from acting on the tax controversy between the BIR and PAGCOR and referring the petitions to the CTA.

- over -

272

³⁴ 259 Phil. 1096 (1989).

³⁵ Id. at 1104.

³⁶ 496 Phil. 506 (2005).

³⁷ Supra note 15.

Then, on August 8, 2017, the Court *En Banc* promulgated the *PSALM* Case, in which it upheld the jurisdiction of the Secretary of Justice over a tax dispute between PSALM and NPC, on one hand, and the BIR, on the other. It ratiocinated as follows:

However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, **which are both wholly government-owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants.** There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. x x x

x x x x

The use of the word “shall” in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word “shall” means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims “solely” between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.

The law is clear and covers “*all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements.*” When the law says “all disputes, claims and controversies solely” among government agencies, the law means *all, without exception*. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

- over -

x x x x

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.** x x x

This case is different from the case of *Philippine National Oil Company v. Court of Appeals (PNOC v. CA)* which involves not only the BIR (a government bureau) and the PNOC and PNB (both government-owned or controlled corporations), but also respondent Tirso Savellano, **a private citizen**. Clearly, PD 242 is not applicable to the case of *PNOC v. CA*.³⁸ (emphases in the original; citations omitted)

The Court also justified that the issuance of P.D. No. 242 was pursuant to the President's constitutional power of control over the Executive Branch, and administrative remedies must first be exhausted before resort to the courts:

It is only proper that intra-governmental disputes be settled administratively since the **opposing government offices, agencies and instrumentalities are all under the President's executive control and supervision**. Section 17, Article VII of the Constitution states unequivocally that: "**The President shall have control of all the executive departments, bureaus and offices**. He shall ensure that the laws be faithfully executed." x x x

x x x x

Clearly, the President's constitutional power of control over all the executive departments, bureaus and offices cannot be curtailed or diminished by law. "Since the Constitution has given the President the power of control, with all its awesome implications, it is the Constitution alone which can curtail such power." **This constitutional power of control of the President cannot be diminished by the CTA. Thus, if two executive offices or agencies cannot agree, it is only proper and logical that the President, as the sole Executive who under the Constitution has control over both offices or agencies in dispute, should resolve the dispute instead of the courts. The judiciary should not intrude in this executive function of determining which is correct between the opposing government offices or agencies, which are both under the sole**

- over -

272

³⁸ *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, supra note 10, at 992-996.

control of the President. Under his constitutional power of control, the President decides the dispute between the two executive offices. The judiciary cannot substitute its decision over that of the President. Only after the President has decided or settled the dispute can the courts' jurisdiction be invoked. Until such time, the judiciary should not interfere since the issue is not yet ripe for judicial adjudication. Otherwise, the judiciary would infringe on the President's exercise of his constitutional power of control over all the executive departments, bureaus, and offices.

Furthermore, under the doctrine of exhaustion of administrative remedies, it is mandated that where a remedy before an administrative body is provided by statute, relief must be sought by exhausting this remedy prior to bringing an action in court in order to give the administrative body every opportunity to decide a matter that comes within its jurisdiction. A litigant cannot go to court without first pursuing his administrative remedies; otherwise, his action is premature and his case is not ripe for judicial determination. PD 242 (now Chapter 14, Book IV of Executive Order No. 292), provides for such administrative remedy. Thus, only after the President has decided the dispute between government offices and agencies can the losing party resort to the courts, if it so desires. Otherwise, a resort to the courts would be premature for failure to exhaust administrative remedies. Non-observance of the doctrine of exhaustion of administrative remedies would result in lack of cause of action, which is one of the grounds for the dismissal of a complaint.³⁹ (emphases in the original)

Ultimately, the Court provided in the *PSALM* Case the following guidelines in determining jurisdiction over a tax dispute:

To harmonize Section 4 of the 1997 NIRC with [P.D.] No. 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 [P.D.] No. 242.⁴⁰

- over -

272

³⁹ Id. at 997-999.

⁴⁰ Id. at 1001-1002.

*CIR v. The Secretary of Justice and the Metropolitan Cebu Water District (MCWD)*⁴¹ (*MCWD Case*), which involves facts squarely similar with the present case, was subsequently decided by the First Division of the Court in adherence to the ruling in the *PSALM* Case. It involved a disputed tax assessment between MCWD, a local water district and a GOCC, and the CIR. The CIR issued a preliminary assessment notice against MCWD for alleged deficiency income tax, franchise tax, and VAT, plus surcharge, interest, and compromise penalty. MCWD filed a formal protest against the assessment but the CIR failed to act on the protest within the period prescribed. Hence, MCWD sought judicial review by filing a petition for review with the CTA. Upon the CIR's motion, the CTA dismissed the petition for lack of jurisdiction to resolve the matter since the Secretary of Justice has exclusive jurisdiction over disputes between government agencies pursuant to Book IV, Chapter 14, Secs. 66 and 67 of the Administrative Code of 1987. When the Secretary of Justice finally resolved the case in favor of MCWD, the CIR appealed to this Court. Citing the *PSALM* Case, the Court upheld the jurisdiction of the Secretary of Justice over the case:

Nevertheless, the SOJ's jurisdiction over tax disputes between the government and government-owned and controlled corporations has been finally settled by this Court in the recent case of *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, x
x x

x x x x

Since this case is a dispute between the CIR and respondent, a local water district, which is a GOCC pursuant to P.D. No. 198, also known as the Provincial Water Utilities Act of 1973, clearly, the SOJ has jurisdiction to decide over the case.⁴²

Clearly then, prevailing jurisprudence acknowledges the jurisdiction of the Secretary of Justice over disputes solely between or among government agencies and GOCCs, regardless of the nature of the dispute – be it a protest on a tax assessment or a conflict in the interpretation of a contract – thus, already negating the distinction proffered by the CIR.

Furthermore, while there might have previously been room for interpretation of Sec. 1 of P.D. No. 242, more specific words are used

- over -
272

⁴¹ 835 Phil. 931 (2018).

⁴² Id. at 938-942.

with the embodiment of the same provision in Book IV, Chapter 14, Sec. 66 of the Administrative Code of 1987. Sec. 1 of P.D. No. 242 states that it applies to “all disputes, claims and controversies x x x arising from the interpretation and application of statutes, contracts or agreements x x x.” This allows the argument that a factual issue involving the amount or computation of a tax assessment is not covered by the provision as it does not arise from the interpretation or application of a statute, contract, or agreement.

However, Book IV, Chapter 14, Sec. 66 of the Administrative Code of 1987 slightly deviates from the original language of P.D. No. 242, Sec. 1 and now refers to “[a]ll disputes, claims and controversies x x x such as those arising from the interpretation and application of statutes, contracts or agreements x x x.” The phrase “such as” is commonly known, understood, and used to introduce an example or a series of examples.⁴³ The principle of *expressio unius est exclusio alterius* does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only.⁴⁴ Consequently, the jurisdiction of the Secretary of Justice over disputes between or among government agencies and GOCCs cannot be limited to those arising from the interpretation and application of statutes, contracts, or agreements, as Sec. 66 of the Administrative Code of 1987 merely pertains to the same as an example of such disputes covered. The inclusion of the additional phrase “such as” in Sec. 66 of the Administrative Code cannot be interpreted or construed any other way, so that as the Court had already categorically pronounced in the *PSALM* Case, when it said “all disputes, claims and controversies solely between or among departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or-controlled corporations,” the law means all, without exception, save for those cases already pending at the time of the effectivity of P.D. No. 242.⁴⁵

The reversal of an interpretation of the law cannot be given retroactive effect to the prejudice of parties who may have relied on the first interpretation.

- over -

272

⁴³Merriam-Webster (n.d.), “Such as,” available at: <https://www.merriam-webster.com/dictionary/such%20as> (last accessed July 26, 2021).

⁴⁴*Binay v. Hon. Sandiganbayan and the Department of the Interior and Local Government*, 374 Phil. 413, 439 (1999).

⁴⁵ *Rollo*, p. 118.

While the *PSALM* Case, as the prevailing jurisprudence, already settles that it is the Secretary of Justice and not the CTA which has jurisdiction over all disputes between and among government agencies and GOCCs, including disputed tax assessments, the Court cannot retroactively apply the *PSALM* Case, to the prejudice of parties who may have relied on an earlier interpretation of the law, such as PMDC.

The CTA Division, affirmed by the CTA *En Banc*, dismissed the petition of PMDC based on the *PAGCOR* Case, in which the Court held:

x x x Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country, and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*.⁴⁶ (citations omitted)

Therefore, following the *PAGCOR* Case, the CTA declared that when a new doctrine divests the office of jurisdiction it originally exercised, the proper and prudent course of action would be to refer the case to the appropriate body.⁴⁷ Nevertheless, it is notable that in the same *PAGCOR* Case, the Court also explicitly acknowledged that such change in the judicial interpretation cannot be given retroactive effect:

Nonetheless, the Secretary of Justice should not be taken to task for initially entertaining the petitions considering that the prevailing interpretation of the law on jurisdiction at the time of their filing was that he had jurisdiction. Neither should *PAGCOR* be blamed in bringing its appeal to the DOJ on January 5, 2004 and August 4, 2004 because the prevailing rule

- over -

272

⁴⁶ *CIR v. Secretary of Justice and Philippine Amusement and Gaming Corporation*, supra note 15, at 24.

⁴⁷ *Rollo*, p. 163.

then was the interpretation in *Development Bank of the Philippines v. Court of Appeals*. **The emergence of the later ruling was beyond PAGCOR's control.** Accordingly, the lapse of the period within which to appeal the disputed assessments to the CTA could not be taken against PAGCOR. **While a judicial interpretation becomes a part of the law as of the date that the law was originally passed, the reversal of the interpretation cannot be given retroactive effect to the prejudice of parties who may have relied on the first interpretation.**⁴⁸ (emphases supplied)

While, as a general rule, judicial interpretation becomes part of the law as of the date that law was originally passed, when a doctrine of this Court is overruled, and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.⁴⁹ In the present case, PMDC filed its petition for review with the CTA on March 14, 2016.⁵⁰ Trial then regularly ensued, with both parties having already presented their witnesses so that by the time of promulgation of the *PSALM* Case on August 8, 2017, there was nothing left for the CTA Division to do but to render judgment on the petition of PMDC. Irrefragably, at the time PMDC filed its petition with the CTA, the prevailing jurisprudence then was the *PAGCOR* Case which, in turn, reiterated the ruling in the *PNOC* Case that it was the CTA, not the Secretary of Justice, who had jurisdiction to review disputed tax assessments even if these were solely between or among government agencies and GOCCs. PMDC, thus, cannot be faulted for seeking recourse from the CTA as the prevailing jurisprudence at the time of the filing of the petition directed it to do so. Under the particular circumstances of this case, for the CTA to refuse to render judgment on the petition of PMDC at such a late stage and to require that the case be refiled and reheard before the Secretary of Justice, would no longer be the prudent thing to do, as it will only result in the further unjustifiable and unnecessary delay of the case, to the grave prejudice of PMDC.

WHEREFORE, premises considered, the petition is **GRANTED.** The Petition for Review of petitioner Philippine Mining Development Corporation in CTA Case No. 9292 is **REINSTATED** and the Court of Tax Appeals is **DIRECTED** to resolve the case with dispatch.

- over -

272


⁴⁸ *CIR v. Secretary of Justice and Philippine Amusement and Gaming Corporation*, supra note 15, at 25.

⁴⁹ *Columbia Pictures v. Court of Appeals*, 329 Phil. 875, 908 (1996), as cited in *Columbia Pictures Entertainment, Inc. v. Court of Appeals*, 330 Phil. 771, 779 (1996).

⁵⁰ *Rollo*, p. 68.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *10/6/21*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
272

OFFICE OF THE GOVERNMENT
CORPORATE COUNSEL
Counsel for Petitioner
3rd Floor, MWSS Building
Katipunan Road, Balara, 1105 Quezon City

Court of Tax Appeals
National Government Center
Diliman, 1101 Quezon City
(CTA EB No. 1900)
(CTA Case No. 9292)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

LITIGATION DIVISION
BUREAU OF INTERNAL REVENUE
703, 7/F, BIR National Office Building
Agham Road, Diliman
1101 Quezon City

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Philippine Judicial Academy (x)
Supreme Court

Judgment Division (x)
Supreme Court



UR

