



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**COMMISSIONER OF INTERNAL REVENUE,**      **G.R. No. 209289**

Petitioner,

Present:

LEONARDO-DE CASTRO, J.,\*  
*Acting Chairperson,*

- versus -

PERALTA,\*\*  
 DEL CASTILLO,  
 TIJAM, and  
 GESMUNDO, JJ.\*\*\*

**THE SECRETARY OF JUSTICE  
 and METROPOLITAN CEBU  
 WATER DISTRICT (MCWD),**  
 Respondents.

Promulgated:

**JUL 09 2018**

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**DECISION**

**TIJAM, J.:**

Before Us is a Petition for Review on *Certiorari*<sup>1</sup> filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Decision<sup>2</sup> dated January 23, 2013 and Resolution<sup>3</sup> dated August 29, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 117577 dismissing the petition for *certiorari* filed by CIR.

\* Designated as Acting Chairperson per Special Order No. 2559 dated May 11, 2018.

\*\* Designated as Additional Member per Raffle dated April 10, 2017 *vice* Associate Justice Francis H. Jardeleza.

\*\*\* Designated as Acting Member per Special Order No. 2560 dated May 11, 2018.

<sup>1</sup> *Rollo*, pp. 10-32.

<sup>2</sup> Penned by Associate Justice Eduardo B. Peralta, Jr, concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion; *id.* at 35-47.

<sup>3</sup> *Id.* at 48-49.

### The Antecedent Facts

Metropolitan Cebu Water District (respondent) received a Preliminary Assessment Notice from the Bureau of Internal Revenue (BIR) for alleged tax deficiencies for the year 2000 in the total amount of ₱70,660,389.00, representing alleged deficiency income, franchise and value added taxes with surcharge and interest, as well as compromise penalties.<sup>4</sup>

Respondent filed a formal protest with the Regional Director, BIR Revenue Region No. 13. The CIR however failed to act on the protest within 180 days from submission of the supporting documents. Thus, respondent filed a Petition for Review before the Court of Tax Appeals (CTA). The CIR however opposed the said petition on the ground that the Secretary of Justice (SOJ) has jurisdiction over the dispute considering that respondent is a government-owned or controlled corporation (GOCC). As such, the CTA dismissed the petition.<sup>5</sup>

Respondent then filed a Petition for Arbitration before the SOJ. In a complete turnaround, the CIR claimed that the SOJ has no jurisdiction over the case since the issue in dispute is the validity of the tax assessment against respondent.<sup>6</sup>

The case proceeded and the SOJ rendered its Decision<sup>7</sup> dated April 23, 2010 disposing as follows:

**WHEREFORE**, premises considered, MCWD is declared (a) exempt from payment of income tax from gross income pursuant to Section 32(B)(7)(b) of the National Internal Revenue Code of 1997, (b) liable for franchise tax of two percent (2%) of its gross receipts, (c) exempt from value-added tax, and (d) not liable to pay surcharge, interest, and compromise penalty on the deficiency taxes.

No cost.

SO ORDERED.<sup>8</sup>

The motion for reconsideration of the CIR was likewise denied by the SOJ in the Order dated August 20, 2010.<sup>9</sup>

Aggrieved, the CIR filed a Petition for *Certiorari* before the CA imputing grave abuse of discretion on the SOJ for assuming jurisdiction over the case.

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<sup>4</sup> Id. at 36.

<sup>5</sup> Id.

<sup>6</sup> Id. at 36-37.

<sup>7</sup> Id. at 84-94.

<sup>8</sup> Id. at 93.

<sup>9</sup> Id. at 37.

The CA, in its Decision<sup>10</sup> dated January 23, 2013, dismissed the petition for *certiorari*. The motion for reconsideration was also denied in the CA Resolution<sup>11</sup> dated August 29, 2013.

Thus, the CIR comes before Us claiming that the SOJ has no jurisdiction to decide the Petition for Arbitration filed by respondent which assails the tax assessment issued by the BIR.

### **Ruling of the Court**

#### ***The petition is denied.***

At the outset, We must emphasize that the decision of the SOJ was reviewed by the CA through a petition for *certiorari* under Rule 65 of the Rules of Court. As such, the CA must resolve the question of whether the SOJ committed grave abuse of discretion amounting to lack of excess of jurisdiction necessitating the reversal of the same. Necessarily, when the CA Decision is brought before Us through a petition for review on *certiorari* under Rule 45 of the Rules of Court, We must determine whether the CA erred in not finding any grave abuse of discretion on the part of the SOJ in rendering the assailed decision.

We hold that the CA correctly ruled that the SOJ did not commit any grave abuse of discretion in holding that the dispute between the CIR and the respondent is properly within the jurisdiction of the SOJ.

#### **The SOJ has jurisdiction to decide the case**

Here, respondent filed a protest with the CIR to assail the tax assessment issued to respondent. For failure of the CIR to act within 180 days from submission of the supporting documents, respondent filed a petition for review before the CTA. Interestingly, the CIR filed a motion to dismiss the petition for review on the ground that the CTA has no jurisdiction to resolve the said matter since the SOJ has exclusive jurisdiction over all disputes between the government and GOCCs pursuant to Section 66<sup>12</sup> and 67,<sup>13</sup> Chapter 14, Book IV of the Administrative Code of

<sup>10</sup> Id. at 35-47.

<sup>11</sup> Id. at 48-49.

<sup>12</sup> SEC. 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.

<sup>13</sup> SEC. 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

1987. As a result, the CTA dismissed the petition. When the SOJ assumed jurisdiction over the petition for arbitration filed by the respondent, the CIR, completely changed its stand and claimed that the SOJ has no jurisdiction over the case.

This turnaround by the CIR cannot be countenanced. The CIR cannot invoke jurisdiction of the SOJ and then completely reject the same. "A party cannot invoke jurisdiction at one time and reject it at another time in the same controversy to suit its interests and convenience."<sup>14</sup> Jurisdiction is conferred by law and cannot be made dependent on the whims and caprices of a party.<sup>15</sup> "Jurisdiction, once acquired, continues until the case is finally terminated."<sup>16</sup> Thus, the SOJ having acquired jurisdiction over the dispute between the CIR and the respondent, continues to exercise the same until the termination of 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*,<sup>17</sup> to wit:

The primary issue in this case is whether the DOJ Secretary has jurisdiction over OSJ Case No. 2007-3 which involves the resolution of whether the sale of the Pantabangan-Masiway Plant and Magat Plant is subject to VAT.

We agree with the Court of Appeals that jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists.

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**

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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.

<sup>14</sup> *Saulog Transit, Inc. v. Hon. Lazaro, etc.*, 213 Phil. 529, 539 (1984).

<sup>15</sup> *See Georg Grotjahn GMBH and Co. v. Judge Isnani*, 305 Phil. 231 (1994).

<sup>16</sup> *Ando v. Campo, et al.*, 658 Phil. 636, 645 (2011).

<sup>17</sup> G.R. No. 198146, August 8, 2017.

**administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. Sections 1, 2, and 3 of PD 242 read:

**Section 1. Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter:** Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree.

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

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

- (a) The Solicitor General, with respect to disputes or claims [or] controversies between or among the departments, bureaus, offices and other agencies of the National Government;
- (b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or controlled corporations or entities being served by the Office of the Government Corporate Counsel; and
- (c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b). 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

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imperative. Thus, under PD 242, it is mandatory that disputes and claims "**solely**" between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.

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

The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts.** As explained by the Court in *Philippine Veterans Investment Development Corp. (PHIVIDEC) v. Judge Velez*:

Contrary to the opinion of the lower court, P.D. No. 242 is not unconstitutional. It does not diminish the jurisdiction of [the] courts but only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including government-owned or controlled corporations, so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements. The procedure is not much different, and no less desirable, than the arbitration procedures provided in Republic Act No. 876 (Arbitration Law) and in Section 26, R.A. 6715 (The Labor Code). It is an alternative to, or a substitute for, traditional litigation in court with the added advantage of avoiding the delays, vexations and expense of court proceedings. Or, as P.D. No. 242 itself explains, its purpose is "the elimination of needless clogging of court dockets to prevent the waste of time and energies not only of the government lawyers but also of the courts, and eliminates expenses incurred in the filing and prosecution of judicial actions."

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.<sup>18</sup> (Emphasis in the original)

P.D. No. 242<sup>19</sup> is now embodied in Chapter 14, Book IV of Executive Order (E.O.) No. 292, otherwise known as the Administrative Code of 1987. The pertinent provisions of which provides:

**SEC. 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.

**SEC. 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. (Emphasis ours)**

**SEC. 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). (Emphasis ours)

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,<sup>20</sup> also known as the Provincial Water Utilities Act of 1973, clearly, the SOJ has jurisdiction to decide over the case.

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<sup>18</sup> *Id.*

<sup>19</sup> 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.

<sup>20</sup> DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES.



**The petition should be dismissed for failure of the CIR to exhaust administrative remedies**

In the case of *Power Sector Assets and Liabilities Management Corporation*,<sup>21</sup> this Court held that:

**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.<sup>22</sup> (Citations omitted and emphasis in the original)

Under Section 70,<sup>23</sup> Chapter 14, Book IV of the Administrative Code of 1987, it is provided that where the amount of the claim exceeds, one million pesos, the decision of the SOJ should be appealed to the Office of the President (OP). Here, the value subject of the case is ₱70,660,389.00. As such, the CIR should have first appealed the decision of the SOJ to the OP rather than to file a Petition for *Certiorari* to the CA.

In the case of *Samar II Electric Cooperative Inc. (SAMELCO), et al. v. Seludo, Jr.*,<sup>24</sup> this Court discussed the importance of exhausting administrative remedies, thus:

The Court, in a long line of cases, has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort

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<sup>21</sup> Supra note 17.

<sup>22</sup> Id.

<sup>23</sup> Sec. 70. *Appeals*. - The decision of the Secretary of Justice as well as that of the Solicitor General, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may, however, be taken to the President where the amount of the claim or the value of the property exceeds one million pesos. The decision of the President shall be final.

<sup>24</sup> 686 Phil. 786 (2012).



to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel*, the case may be dismissed for lack of cause of action.<sup>25</sup> (Citations omitted)

Also, the petition for *certiorari* filed by the CIR before the CA is dismissible on the ground that the same is not a plain, speedy, and adequate remedy granted to the CIR.

It is well settled that a petition for *certiorari* can be availed of when a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.<sup>26</sup> As such, the same "may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law."<sup>27</sup>

In the present case, there is a plain, speedy and adequate remedy in the ordinary course of law which is available to the CIR, which is an appeal to the OP. The CIR, however, failed to avail the same through its own fault.

**WHEREFORE**, the petition is **DENIED**. The Decision dated January 23, 2013 and Resolution dated August 29, 2013 of the Court of Appeals in CA-G.R. SP No. 117577 are hereby **AFFIRMED**.

**SO ORDERED.**

  
**NOEL GIMENEZ TIJAM**  
Associate Justice

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<sup>25</sup> Id. at 796.

<sup>26</sup> Section 1 of Rule 65 of the Rules of Court

**Sec. 1. *Petition for certiorari.*** — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

<sup>27</sup> *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.*, 716 Phil. 500, 512 (2013).

**WE CONCUR:**

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Acting Chairperson

*Diosdado M. Peralta*  
**DIOSDADO M. PERALTA**  
Associate Justice

*Mariano C. Del Castillo*  
**MARIANO C. DEL CASTILLO**  
Associate Justice

*Alexander G. Gesmundo*  
**ALEXANDER G. GESMUNDO**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Acting Chairperson, First Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. 296,  
The Judiciary Act of 1948, as amended)