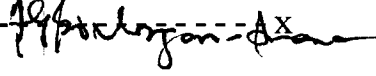


G.R. No. 198146 – Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue

Promulgated: August 8, 2017

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DISSENTING OPINION

DEL CASTILLO, J.:

The Majority Opinion opines that the Secretary of Justice has jurisdiction over the instant case pursuant to Sections 1, 2, and 3 of Presidential Decree No. (PD) 242.

With much regret, I am unable to give my concurrence.

Disputed tax assessments solely involving government entities fall within the exclusive and original jurisdiction of the Commissioner of Internal Revenue (CIR) and the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA).

Section 4¹ of the 1997 National Internal Revenue Code (NIRC) states that **the CIR has the exclusive and original jurisdiction to interpret tax laws and to decide tax cases.** Thus, the CIR has 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 1997 NIRC or other laws administered by the Bureau of Internal Revenue (BIR).

On the other hand, Section 7² of Republic Act No. (RA) 1125, as amended by RA 9282, provides that **decisions or inactions of the CIR in cases involving**

¹ SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

² SEC. 7. Jurisdiction. - The CTA shall exercise:

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

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

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



disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the 1997 NIRC or other laws administered by the BIR are under the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA).

In this case, since what is involved is petitioner's disputed Value-Added Tax (VAT) assessment, which it paid under protest, it is the BIR and the CTA, not the Secretary of Justice, which have exclusive jurisdiction. In fact, the question of whether petitioner's sale of the power plants is subject to VAT is a tax issue that should be resolved by the CIR, subject to the review of the CTA. Unlike the Secretary of Justice, the BIR and the CTA have developed expertise on tax matters. It is only but logical that they should have exclusive jurisdiction to decide on these matters. The authority of the Secretary of Justice under PD 242 to settle and adjudicate all disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, therefore, does not include tax disputes, which are clearly under the jurisdiction of the BIR and the CTA.

Worth mentioning at this point is the case of *National Power Corporation v. Presiding Judge, RTC, 10th Judicial Region, Br. XXV, Cagayan de Oro City*,³ where the Court affirmed the trial court's jurisdiction over a complaint for the collection of real property tax and special education fund tax filed under PD 464 (The Real Property Tax Code, enacted on July 1, 1974) by the Province of Misamis Oriental against National Power Corporation (NAPOCOR). In that case, NAPOCOR cited PD 242 and argued that it is the Secretary of Justice, not the trial court, which had jurisdiction over the case. Applying the rules on statutory construction, the Court, ruled that PD 242, a general law which deals with administrative settlement or adjudication of disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, must yield to PD 464, a special law which deals specifically with real property taxes.

The same ruling must be applied in this case. Thus, PD 242, which is a **general law** on the authority of the Secretary of Justice to settle and adjudicate **all** disputes, claims and controversies between or among national government offices, agencies and instrumentalities, including government-owned or controlled corporations, must yield to the specific provisions of RA 1125, as amended by RA 9282, which is a **specific law** vesting exclusive and primary jurisdiction to the CIR and the CTA on cases pertaining to **disputed tax assessments, tax laws and refunds of internal revenue taxes**.

Moreover, this Court has already made a pronouncement in the recent case of *Commissioner of Internal Revenue v. Secretary of Justice*,⁴ to the effect that the

³ 268 Phil. 507 (1990).

⁴ G.R. No. 177387, November 9, 2016.



Secretary of Justice has no jurisdiction over disputed assessments issued by the BIR in light of the ruling of the Court in *Philippine National Oil Company v. Court of Appeals*.⁵ For reference, I quote herein the ruling of the Court, viz.:

**1. The Secretary of Justice has no jurisdiction to
review the disputed assessments**

The petitioner contends that it is the Court of Tax Appeals (CTA), not the Secretary of Justice, that has the exclusive appellate jurisdiction in this case, pursuant to Section 7 (1) of Republic Act No. 1125 (R.A. No. 1125), which grants the CTA the exclusive appellate jurisdiction to review, among others, the decisions of the Commissioner of Internal Revenue “in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other law or part of law administered by the Bureau of Internal Revenue.”

PAGCOR counters, however, that it is the Secretary of Justice who should adjudicate the dispute by virtue of Chapter 14 of the Revised Administrative Code of 1987, which provides:

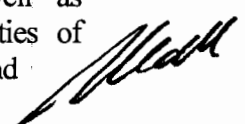
CHAPTER 14. CONTROVERSIES AMONG
GOVERNMENT OFFICES AND CORPORATIONS. SEC. 66.
How settled. — All disputes/claims and controversies, solely
between or among the departments, bureaus, offices, agencies
and instrumentalities of the National Government, including
government-owned and controlled corporations, such as those
arising from the interpretation and application of statutes,
contracts or agreements shall be administratively settled or
adjudicated in the manner provided for in this Chapter. This
Chapter shall, however, not apply to disputes involving the
Congress, the Supreme Court, the Constitutional Commission
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 exofficio legal
adviser of all government-owned or controlled corporations. His
ruling or decision thereon shall be conclusive and binding on all
the parties concerned.

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

⁵ 496 Phil. 506 (2005).



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

Although acknowledging the validity of the petitioner's contention, the Secretary of Justice still resolved the disputed assessments on the basis that the prevailing doctrine at the time of the filing of the petitions in the Department of Justice (DOJ) on January 5, 2004 was that enunciated in *Development Bank of the Philippines v. Court of Appeals*, whereby the Court ruled that:

x x x (T)here is an "irreconcilable repugnancy x x between Section 7(2) of R.A. No. 1125 and P.D. No. 242," and hence, that the latter enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier.

Later on, the Court reversed itself in *Philippine National Oil Company v. Court of Appeals*, and held as follows:

Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect R.A. No. 1125. R.A. No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of R.A. No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, x x x.

Despite the shift in the construction of P.D. No. 242 in relation to R.A. No. 1125, the Secretary of Justice still resolved PAGCOR's petitions on the merits, stating that:

While this ruling (DBP) has been superseded by the ruling in *Philippine National Oil Company vs. CA*, in view of the prospective application of the PNOC ruling, we (the DOJ) are of the view that this Office can continue to assume jurisdiction over this case which was filed and has been pending with this Office since January 5, 2004 and rule on the merits of the case.

We disagree with the action of the Secretary of Justice.

PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004. Philippine National Oil Company v. Court of Appeals was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. 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



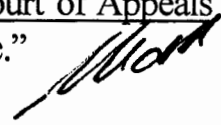
of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings.

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] blame[d] in bringing its appeal to the DOJ on January 5, 2004 and August 4, 2004 because the prevailing rule 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.

There is no reason to reverse or abandon the above ruling.

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

In his Reply, Justice Carpio states that "if the appeal to the Office of the President is denied, the aggrieved party can still appeal to the Court of Appeals (CA) under Section 1, Rule 43 of the 1997 Rules of Civil Procedure."



With due respect, this is specious. An appeal to the CA is not a remedy available to the aggrieved party.

It must be stressed that what is involved in this case is a **tax issue**, that is, petitioner's disputed Value-Added Tax (VAT) assessment, which it paid under protest. The aggrieved party could no longer resort to an appeal under Rule 43 of the 1997 Rules of Civil Procedure; this is not allowed simply because **the CA no longer has jurisdiction over tax cases**.

To recall, Republic Act No. 9282,⁶ enacted on April 23, 2004, expanded the jurisdiction of the Court of Tax Appeals (CTA) and elevated its rank to the level of a collegiate court with special jurisdiction. **Thus, the CTA, a specialized court dedicated exclusively to the study and resolution of tax issues, is no longer under the appellate jurisdiction of the CA. Accordingly, the CA has no jurisdiction to review tax cases as these are under the exclusive jurisdiction of the CTA, a co-equal court.** In fact, the remedy of a party adversely affected by a decision or ruling of the CTA *en banc* is to directly file with the Supreme Court, **not with the CA**, a verified petition for review on certiorari under Rule 45 of the Rules of Court within fifteen days from receipt of the copy of the decision or resolution of the CTA.⁷

Furthermore, in *The City of Manila v. Judge Grecia-Cuerdo*,⁸ the Court ruled that it is the CTA, not the CA, which has jurisdiction over a special civil action for certiorari assailing an interlocutory order issued by the RTC in a local tax case. In that case, the Court explained that:

If this Court were to sustain petitioners' contention that jurisdiction over their certiorari petition lies with the CA, this Court would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter – precisely the split-jurisdiction situation which is anathema to the orderly administration of justice. The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power. Thus, the Court agrees with the ruling of the CA that since appellate jurisdiction over private respondents' complaint for tax refund is vested in the CTA, it follows that a petition for certiorari seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the same court. To rule otherwise would lead to an

⁶ 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

⁷ REPUBLIC ACT NO. 9282, Section 12.

⁸ 726 Phil. 9 (2014).



absurd situation where one court decides an appeal in the main case while another court rules on an incident in the very same case.

Stated differently, it would be somewhat incongruent with the pronounced judicial abhorrence to split jurisdiction to conclude that the intention of the law is to divide the authority over a local tax case filed with the RTC by giving to the CA or this Court jurisdiction to issue a writ of certiorari against interlocutory orders of the RTC but giving to the CTA the jurisdiction over the appeal from the decision of the trial court in the same case. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of certiorari when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of certiorari in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter.

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all



things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates.” Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

Based on the foregoing disquisitions, it can be reasonably concluded that the authority of the CTA to take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.

x x x x

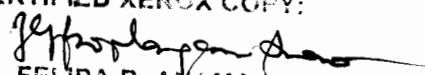
Using the reasoning in the above-cited case, it is clear that the CA should not be allowed to resolve tax issues, such as the instant case, as this would deprive the CTA of its exclusive jurisdiction. It would create an absurd situation of a split-jurisdiction between the CTA and the CA. In addition, this might create conflicting decisions or interpretations of tax laws.

To prove this point, it is significant to mention that the ruling of the Secretary of Justice in this case that the sale of the power plants is not subject to VAT conflicts with the ruling of the CTA in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, CTA EB No. 1282, May 17, 2016, that the proceeds from sale of generating assets is subject to VAT. The said case, docketed as G.R. No. 226556, is now pending before this Court.

All told, I vote to **DENY** the Petition and maintain my view that **disputed tax assessments** solely involving government entities fall within the exclusive and original jurisdiction of the **CIR** and the exclusive appellate jurisdiction of the **CTA**. Thus, to allow the Secretary of Justice to have jurisdiction over the instant case would not only deprive the CTA of its exclusive appellate jurisdiction but would also deprive respondent CIR of any judicial remedy.


MARIANO C. DEL CASTILLO
Associate Justice

CERTIFIED XEROX COPY:


FELIPA D. AVILA
CLERK OF COURT EN BANC
SUPREME COURT