

REPUBLIC OF THE PHILIPPINES  
*Court of Tax Appeals*  
QUEZON CITY

*En Banc*

BANGKO SENTRAL NG PILIPINAS, CTA *EB* NO. 2687  
*Petitioner,* (CTA Case No. 10083)

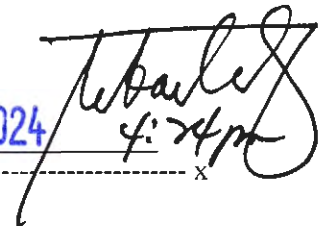
*-versus-*

Present:  
DEL ROSARIO, P.J.,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO,  
REYES-FAJARDO,  
CUI-DAVID,  
FERRER-FLORES, *and*  
ANGELES, *JJ.*

COMMISSIONER OF INTERNAL  
REVENUE,  
*Respondent.*

Promulgated:

FEB 21 2024



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**DECISION**

**MODESTO-SAN PEDRO, J.:**

**The Case**

Before the Court *En Banc* is a **PETITION FOR REVIEW** (“**Petition**”), filed on 16 September 2022,<sup>1</sup> with no comment from respondent.<sup>2</sup>

<sup>1</sup> Records, pp. 1-156.

<sup>2</sup> *Id.*, p. 160.

### The Parties

Petitioner **BANGKO SENTRAL NG PILIPINAS** (“BSP”) is a governmental instrumentality existing by virtue of *Republic Act No. (“RA”) 7653*, otherwise known as *The New Central Bank Act*,<sup>3</sup> with principal office at A. Mabini cor. P. Ocampo Streets, Malate, Manila. It is registered as a taxpayer with Tax Identification Number 000-354-790.<sup>4</sup>

Respondent **COMMISSIONER OF INTERNAL REVENUE** (“CIR”) is the head of the Bureau of Internal Revenue (“BIR”) and is empowered to perform the duties of said office, including, among others, 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 the *National Internal Revenue Code, as amended (“NIRC”)*, or other laws or portions thereof administered by the BIR. He holds office at BIR National Office, BIR Road, Diliman, Quezon City.<sup>5</sup>

### The Facts

In the Petition, petitioner alleged the following facts:<sup>6</sup>

“11. On 03 February 2016, BSP and RD Realty Development Corporation executed a Deed of Absolute Sale relative to the sale for Php4,500,000.00 of a parcel of land in General Santos City with an area of nine thousand square meters, more or less, and covered by TCT No. T-98639.

12. BSP paid CGT in the amount of Php1,620,000.00, based on the following computation:

Table 1

CLASS	AREA IN SQM.	ZONAL VALUE (ZV) PER SQM.	ZV	FAIR MARKET VALUE (FMV) PER Tax Declaration (TD)	SELLING PRICE (SP)	TAX BASE (ZV/FMV/SP whichever is higher)	CGT
Residential	9,000	3,000.00	Php27M	Php2.52M	Php4.5M	Php27M	<b>Php1.62M</b>

12.1 As shown in Table 1, BSP used the “zonal value” of Php27,000,000.00 as the tax base and computed the CGT at Php1,620,000.00 [Php27,000,000.00 x 6% = Php1,620,000.00]

13. Sometime in May 2017, BIR issued an assessment requiring BSP to pay CGT, surcharge, interest and compromise penalty in the total amount of Php6,886,006.10, computed as follows: ✓

<sup>3</sup> As amended by RA 11211.

<sup>4</sup> Records, p. 3.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Id.*, pp. 3-7.

Table 2

CLASS	AREA IN SQM.	ZV PER SQM.	ZV	FMV PER TD	SELLING PRICE (SP)	TAX BASE	CGT
Industrial	9,000	10,650.00	Php95.85M	Php2.52M	Php4.5M	Php95.85M	Php5,751,000.00
Add: Surcharge (Php5.751M x 25%)							1,437,750.00
Add: Interest							1,267,256.10
Add: Compromise Penalty							50,000.00
Less: CGT previously paid							(1,620,000.00)
<b>Additional Amount paid by BSP</b>							<b>Php6,886,006.10</b>

13.1 As shown in Table 2, BIR used the “zonal value” of Php95,850,000.00 as the tax base and computed the CGT due at Php5,751,000.00 [ $\text{Php95,850,000.00} \times 6\% = \text{Php5,751,000.00}$ ].

13.2 The tax base of Php95,850,000.00 was arrived at by multiplying the land area with the “zonal value per square meter” [ $9,000 \times \text{Php10,650.00} = \text{Php95,850,000.00}$ ].

13.3 Notably, the BIR used the value of Php10,650.00 per square meter which is the applicable rate for properties falling under the classification “Industrial – **Along the Road**”, based on the zonal values in General Santos City under the Department Order (D.O.) No. 50-2015 of the Department of Finance (DOF) (“**third revision**”).

13.4 Significantly, on 20 March 2017, the Regional Trial Court (RTC) of General Santos City, in Civil Case No. 8730, issued a Writ of Preliminary Injunction to stop, cease, and hold in abeyance the implementation and enforcement of the **third revision**. It is clear in the Notice of the BIR in its website that the Writ of Preliminary Injunction applies to all cases, in general, and not limited only to Civil Case No. 8730.

13.5 Thus, the applicable schedule of zonal values should have been those under D.O. No. 44-1998 of the DOF (“**second revision**”). Under this schedule, BSP would have even been entitled to a refund of a higher amount of Php5,383,771.73, using the following computation:

Table 3

CLASS	AREA IN SQM.	ZV PER SQM.	ZV	FMV PER TD	SELLING PRICE (SP)	TAX BASE	CGT
Industrial	9,000	4,725.00	Php45.525M	Php2.52M	Php4.5M	Php45.525M	Php2,551,500.00
Less: CGT previously paid							(1,620,000.00)
Add: Surcharge ( $\text{Php2,551,500.00} - \text{Php1,620,000} \times 25\%$ )							232,875.00
Add: Interest (20%)							287,859.38
Add: Compromise Penalty							50,000.00
<b>Additional amount should have been paid by BSP</b>							<b>1,502,234.38</b>
Less: Additional amount actually paid by BSP							6,886,006.10
<b>Amount for refund</b>							<b>-5,383,771.74</b>

14. On 23 May 2017, BSP paid the assessed amount of Php6,886,006.10 under protest. BSP issued Credit Advice No. 10345 dated 23 May 2017 showing that the amount of Php6,886,006.10 had been credited to the Treasurer of the Philippines for the account of the BIR RDO No. 110 – General Santos City and duly received by the BIR.

15. BSP formally filled an administrative claim for refund with RDO No. 125 – Large Taxpayers Service through its Letter dated 07 November 2018. In its Letter, BSP explained that the fair market value (FMV) of the subject property for purposes of determining CGT is not

Php10,650 per square meter, which is applicable only if the property falls under the classification “Industrial – **Along the Road**” – but should be the lower amount of Php7,500.00 per square meter considering that the subject property falls under the classification “Industrial – **Interior Lots**”.

16. Using the amount of Php7,500.00 per square meter as zonal value of the subject property for purposes of computing CGT, the additional assessment should not have been Php6,886,006.10 but should have been Php3,767,900.00 only, as shown below:

Table 3

CLASS	AREA IN SQM.	ZV PER SQM.	ZV	FMV PER TD	SELLING PRICE (SP)	TAX BASE	CGT
Industrial	9,000	7,500.00	Php67.5M	Php2.52M	Php4.5M	Php67.5M	Php4,050,000.00
Add: Surcharge (Php4,050,000.00-Php1,620,000.00) x 25%							607,500.00
Add: Interest							680,400.00
Add: Compromise Penalty							50,000.00
Less: CGT previously paid							(1,620,000.00)
<b>Additional Amount paid by BSP</b>							<b>Php3,767,900.00</b>

16.1 The tax base of Php67,500,000.00 was arrived at by multiplying the land area with the proper “zonal value per square meter” [9,000 x Php7,500.00 = Php67,500,000.00].

16.2 The zonal value per square meter of Php7,500.00 for properties under the classification “Industrial – **Interior Lots**” should have been used, considering that the subject property is an interior lot.

17. Accordingly, BSP is entitled to a refund of **Php3,118,106.10**, the difference between the additional amount paid by BSP of Php6,886,006.10 (Table 2) and the correct deficiency CGT, surcharge, interest, and compromise penalty of Php3,767,900.00 (Table 3).

18. Having been informed by RDO No. 125 - LTS that its claim for refund was endorsed to RDO No. 110 – General Santos City, BSP asked for an update on its claim through a letter dated 21 January 2019 addressed to RDO No. 110 – General Santos City.

19. Further, in a letter dated 21 May 2019 addressed to the CIR, BSP asked for a follow-up on its claim for refund.

20. Considering the inaction of RDO Nos. 125 and 110, as well as the CIR, on the request for refund within the two (2) year prescriptive period, petitioner-appellant BSP sought recourse before the Honorable Court through its *Petition* dated 22 May 2019 pursuant to Section 7 of R.A. 9282 and the Revised Rules of the CTA.

21. After a full-blown trial, petitioner-appellant BSP filed its *Memorandum* dated 12 January 2021 with CTA First Division.

22. On 23 February 2022, petitioner-appellant BSP received a copy of the assailed *Decision* of the CTA First Division dismissing the *Petition for Review* filed by BSP on the ground of lack of jurisdiction.

23. On 10 March 2022, petitioner-appellant BSP received a copy of the assailed *Resolution* which denied BSP’s *Motion for Reconsideration*. 9

24. On 01 September 2022, petitioner-appellant BSP received a copy of the assailed Resolution which denied BSP's *Motion for Reconsideration*.

25. Hence, this Petition.”

On 16 September 2022, petitioner filed the instant Petition before the Court *En Banc*.

The Court *En Banc* then issued a Resolution, dated 12 October 2022, requiring respondent to file its Comment to the Petition within ten (10) days from notice.<sup>7</sup> Respondent failed to file his Comment.<sup>8</sup>

On 15 February 2023, this Court *En Banc* issued a Resolution submitting the instant case for decision.<sup>9</sup>

Hence, this Decision.

### **The Assigned Errors**<sup>10</sup>

The Petition raised the following issues for resolution by the Court *En Banc*:

1. Whether the Court of Tax Appeals (“CTA”) has jurisdiction over the petitioner-appellant BSP’s claim for overpayment of Capital Gains Tax (“CGT”), Surcharge and Interest; and
2. Whether petitioner-appellant BSP is entitled to a refund of the overpaid CGT, Surcharge and Interest.

### **Arguments of the Parties**

Petitioner presents the following arguments:<sup>11</sup>

1. The CTA has jurisdiction over petitioner-appellant BSP’s claim for refund of overpayment of CGT, Surcharge and Interest. Contrary to the Assailed Decision, *Presidential Decree No. (“PD”) 242* is not applicable to petitioner-appellant BSP. *RA 1125*, as amended by *RA 9282*, being a special and later law which specifically vests the

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<sup>7</sup> *Id.*, pp. 157-159.

<sup>8</sup> *Id.*, p. 160.

<sup>9</sup> *Id.*, pp. 161-163.

<sup>10</sup> *Id.*, p. 7.

<sup>11</sup> *Id.*, pp. 7-28.

Honorable Court with jurisdiction over claims for tax refund, should prevail over *PD 242* and the *1987 Administrative Code*. As the independent Central Monetary Authority vested with fiscal and administrative autonomy, petitioner-appellant BSP is not covered by *PD 242*, which applies between executive offices and agencies under the control and supervision of the President. Consequently, the Supreme Court's ruling in *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue ("PSALM Case")*<sup>12</sup> does not apply;

2. Petitioner-appellant BSP is entitled to a refund of the overpaid CGT, Surcharge and Interest considering that: i) the BIR used the wrong amount of Fair Market Value ("FMV"), which resulted in the erroneous computation of CGT; and ii) the BIR also erred in the computation of Surcharge and Interest; and
3. The dismissal of the *Petition*, dated 22 May 2019 effectively requiring the filing of an action anew with the Secretary of Justice runs counter to the principle of speedy disposition of cases.


As provided, above respondent failed to file any Comment.

### **The Ruling of the Court En Banc**

The *Petition* is impressed with merit.

The assailed Decision dismissed the *Petition for Review* for lack of jurisdiction. In so ruling, it applied the *PSALM Case* where the Supreme Court ruled that under *PD 242*, all disputes and claims solely between government agencies and offices, including GOCCs, shall be resolved administratively by the Department of Justice ("DOJ") or the Office of the Solicitor General ("OSG") depending on the issue involved. However, the Supreme Court noted that the referral to the DOJ or OSG of disputes and claims solely between government agencies and offices, including GOCCs, are limited only to those emanating from government offices, agencies or GOCCs under the Executive Branch. Said case provides, to wit:

"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..."

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<sup>12</sup> G.R. No. 198146, 8 August 2017.

**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.**

XXX XXX XXX

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." (Emphasis and underscoring, Ours)


This was confirmed in the recent case of *The Department of Energy v. Court of Tax Appeals*.<sup>13</sup> In said case, the Supreme Court explained that the administrative settlement procedure contained under *PD 242* is designed to resolve disputes solely between offices agencies and GOCCs under the President's control and supervision.

The question, then, is this: Is petitioner BSP under the President's executive control and supervision? This Court finds that it is not.

Indeed, while petitioner BSP is a government-owned corporation, it was envisioned and established to be an independent central monetary authority that enjoys fiscal and administrative autonomy. *Section 20, Article XII of the 1987 Constitution* provides:

"Section 20. The Congress shall establish an **independent central monetary authority**, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

Until the Congress otherwise provides, the Central Bank of the Philippines operating under existing laws, shall function as the central monetary authority." (Emphasis and underscoring, Ours.)

In turn, *Sections 1 and 2 of RA 7653*, otherwise known as *The New Central Bank Act*, provide: 

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<sup>13</sup> G.R. No. 260912, 17 August 2022.

“SECTION I. Declaration of Policy. - The State shall maintain a **central monetary authority that shall function and operate as an independent and accountable body corporate** in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being **a government owned corporation, shall enjoy fiscal and administrative autonomy.**

SEC. 2. Creation of the Bangko Sentral. - There is hereby established **an independent central monetary authority**, which shall be a body corporate known as the Bangko Sentral ng Pilipinas, hereafter referred to as the Bangko Sentral.”

(Emphasis and underscoring, Ours)

Being an independent central monetary authority, BSP is not under the supervision and control of the President and Executive Branch despite the fact that the government owns the BSP. This was duly discussed in the case of *Bangko Sentral ng Pilipinas v. The Commission on Audit*,<sup>14</sup> to wit:

“B. The records of the Constitutional Commission and the legislative deliberations on RA 7653 reveal the intent to exclude the BSP from the general category of GOCCs.

The creation of a central monetary authority is mandated by the Constitution. Under Section 20, Article XII thereof, the Congress shall establish an independent central monetary authority that shall provide policy direction in the areas of money, banking, and credit:

SECTION 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

Until the Congress otherwise provides, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority.

Pursuant to this provision, the BSP was created under RA 7653. Section 1 of the BSP Charter reiterates the independence of the BSP, as well as its accountability, in the discharge of its responsibilities concerning money, banking, and credit:

SECTION 1. Declaration of Policy. - The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning

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<sup>14</sup> G.R. No. 210314, 12 October 2021.



money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a government--owned corporation, shall enjoy fiscal and administrative autonomy.

Notably, the predecessor of the BSP, the Central Bank, did not enjoy the same independence. Unlike Section 20, Article XII of the 1987 Constitution, the text of Section 14, Article XV of the 1973 Constitution does not contain the word 'independent.' Similarly, RA 265 or the Central Bank Charter does not contain the same qualification. A reading of the records of the Constitutional Commission and the congressional deliberations reveals that the grant of further independence to the BSP, and the express inclusion of 'independence' in the Constitution and its charter, was in response to the political pressure and influence previously exerted by the government on the Central Bank, which led to disastrous economic consequences. Thus, the framers intended the word 'independent' to mean independence from the government, especially from the Executive department, in providing policy direction in the areas of money, banking, and credit, viz:

THE VICE-PRESIDENT: Let us have the last interpellator.

MR. MAAMBONG: Mr. Vice-President, I ask that Commissioner Natividad be recognized.

THE VICE-PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: Thank you.

I refer to Section 10, page 4, which says:

The Congress shall establish an independent central monetary authority, the majority of whose governing board shall come from the private sector, which shall provide policy direction in the areas of money, banking, and credit.

If this is an independent major governmental activity, why do we want that it should have a majority coming from the private sector. If we do this, shall we not lose control of monetary and fiscal policies? The government may lose control of monetary and fiscal policies because we use the word 'independent' and then say 'majority of the members of the governing board shall come from the private sector.' Is this not a formula for losing control of monetary and fiscal policies of the government?

MR. VILLEGAS: No, this is a formula intended to prevent what happened in the last regime when the fiscal authorities sided with the executive branch and were systematically in control of monetary policy. This can lead to disastrous consequences. When the fiscal and the monetary authorities of a specific economy are combined, then there can be a lot of irresponsibility. So, this word 'independent' refers to the executive branch.

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Senator Maceda. Would it be correct to say at this point in time, as a general statement, the reason we are discussing this bill here today is that the Central Bank has allowed itself to be interfered with politically, has allowed itself to be run by the political leadership and that, certainly, its monetary policies were adopted not on the basis of long-term financial stability, but on the basis of political expediency or political considerations?

Senator Roco. There may have been instances, as being mentioned by the Gentleman, Mr. President. So that is historically an accurate statement.

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Senator Roco. x x x

Mr. President... The Monetary Authority is expected to be independent of the President and the Congress in providing 'policy directions in the areas of money, banking and credit.' Until otherwise provided, the present Central Bank shall perform these functions.

Thus, Mr. President, when we read the full constitutional mandate, Congress is mandated to leave the monetary policy to the new Central Monetary Authority or the Bangko Sentral, as we call it in this bill, or to the old Central bank as it exists today.

To ensure the independence of the BSP, Section 20, Article XII expressly requires the majority of the BSP's governing board to come from the private sector, and not from the government—a requirement not found in the 1973 Constitution, and which digresses from the composition of the past Central Bank.

Significantly, the independence of the BSP necessarily entailed its exclusion from the 'general category of government-owned and controlled corporations' which are under the control of the Executive department, viz:

MR. ZIALCITA. x x x

Let me start by saying first of all, in terms of the format, the new Central Bank draft bill basically reproduces the old C.B. Charter and incorporates the amendments that were already done earlier in House Bill... I forgot the number, and that we would like to add. So, let me just go over these changes. And there are actually about twelve of them, but let me just highlight the more important ones.

First of all, there is a new section entitled, Declaration of Policy. This is intended to emphasize the independence of,

the Central Bank, and at the same time remove the Central Monetary Authority from the general category of government-owned and controlled corporations.

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MR. FUA. I was asking this question - if the central monetary authority is to be independent, you will, of course, refer to the exclusiveness of its operations as far as money matters are concerned, banking system is concerned and credit system is concerned for the government. And all the other government agencies including the rules and regulations promulgated for the operations of some of its instrumentalities or corporations, if there are corporations under that department, would not apply to the central monetary authority? And that as a matter of fact, any other law passed by Congress relative to regulations and rules governing government corporations or governing agencies shall not apply to the central monetary authority simply because under this bill you want to create an independent and exclusive central monetary authority?

MR. JAVIER (E.) Well, Your Honor, here in the Declaration of Policy, it does not mean that the central monetary authority shall be above the law or it should no longer be accountable to any other agency. It can be accountable to Congress. It can be accountable to courts. But, Your Honor, since the Constitution provides that we should establish an independent Central Monetary Authority, then we have to treat this as separate from other government-owned or controlled corporations which are now under the control of the Executive Department. That's the meaning of this provision, Your Honor. Now, most of these government-owned or controlled corporations are under the Office of the President or they are attached to departments and these departments are also under the Office of the President. That's the meaning of this provision, that the Central Monetary Authority or the Bangko Sentral ng Pilipinas will not be in the same manner or treated in the same manners as a government-owned or controlled corporation. Meaning, that **it should not be under the Executive Department and it should not be interfered with by other government agencies.** But it does not mean that the Central Monetary Authority should be above the law. There is nothing in this bill which exempts the Central Monetary from the coverage of the law.

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Senator Roco. The term 'government-owned or controlled corporations,' Mr. President, is defined under several laws. Therefore, they apply depending on which law the Gentleman is referring to.

In the view of the Committee - and this is my own preference, Mr. President - the Central Bank is not a normal,

government-owned or -controlled corporation, in the sense it is used in the Investments law, in the sense it is used in the MDC Charter. It is different, although, evidently speaking it is a public corporation in the Administrative Law, since it is a mandated Charter by the Constitution. We might say, it is a semi-constitutional body, because we are required to create it. It is a corporation we are creating by special law. So, it is not quite the same as GOCCs or government-owned corporations.

The studies indicate definitions. But if our intention is to be followed, Mr. President, we leave it to the courts later on to define the in-between. As far as this Committee's intention was concerned, it was the intention to create sui generis in the Central Bank. It is owned by the government, but not quite government-owned or -controlled corporation as defined now by various law.

**Thus, the legislative intent has always been to set apart the BSP from the GOCCs under the control of the executive department.**

Concededly, the reference in Section 1 of RA 7653 to the BSP as a 'government-owned corporation' may be taken as basis for the BSP's inclusion in the GOCCs covered by RA 7656. This was alluded to by Justice Dante O. Tinga in his Dissenting Opinion in Manila International Airport Authority v. Court of Appeals, where he drew attention to the inconsistency between the wording of the provision ('government-owned corporation') and the majority's view that the BSP is not a GOCC.

However, when Section 1 is read in its entirety, it is clear that the phrase 'while being a government-owned corporation' merely recognizes the fact that the BSP is owned by the government, that its capital is fully subscribed by the latter. Indeed, the central point of Section I is to express the State policy to maintain an independent and accountable central monetary authority-not to provide for the BSP's legal status-hence the title 'Declaration of Policy.' As stated in the legislative records the BSP 'is owned by the government, but not quite government-owned or -controlled corporation as defined now by various law.'"

(Emphasis and underscoring, Ours)

Given the foregoing, petitioner BSP is indeed not a government office, agency, or GOCC under the supervision and control of the Executive Branch. Thus, the administrative procedure delineated under **PD 242** does not apply in cases involving the BSP as it is a corporation not under the control and supervision of the President.

It follows, then, that the dispute between the parties, which involves a claim for refund, is not governed by **PD 242**.

Since neither the DOJ nor the OSG can take cognizance of the instant tax refund claim, it was correct for petitioner BSP to avail of the CTA's exclusive appellate jurisdiction on tax refund cases. Direct recourse to the,

CTA's jurisdiction is necessary considering the absence of an administrative settlement procedure within the Executive Branch in relation to tax issues involving the BIR and the BSP. In addition, it is only logical that the CTA should assume jurisdiction over a tax dispute involving petitioner BSP and respondent BIR to the exclusion of other courts considering that the CTA has the undoubted expertise and exclusive jurisdiction to rule on tax disputes. Such jurisdiction is conferred under *Section 7 (a) (1) of RA 1125*, as amended by *RA 9282* and *RA 9503*, as follows:

"Section 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 relations thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; xxx "

(Emphasis, Ours)

Moreover, *Section 4 of the NIRC* is clear in defining the exclusive appellate jurisdiction of the CTA over matters involving the refund of internal revenue taxes, fees or other charges, or penalties in relation thereto arising under the *NIRC*, viz.:

**"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."**

(Emphasis, Ours)

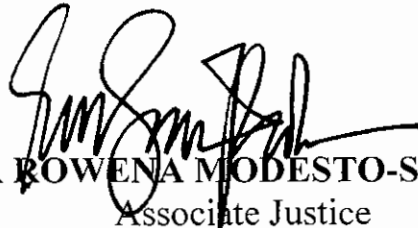
To reiterate, the present case involves an issue on the validity of petitioner's tax refund claims which it instituted against respondent. This is a matter that clearly falls under the "refund" jurisdiction of the CTA. As *RA*

**1125, as amended RA 9282 and RA 9503**, does not provide for an exception or limit as to the jurisdiction of the CTA over matters involving the refund of internal revenue taxes, fees or other charges, or penalties in relation thereto arising under the *NIRC*, the present case falls under **Section 7 (a) (1) of RA 1125, as amended**.

Given the foregoing, the CTA has undoubted jurisdiction to try the instant case for refund.

**WHEREFORE**, the Petition for Review is hereby **GRANTED**. This case is **REMANDED** to the Court in Division to resolve petitioner's claim for refund on the merits with due and deliberate dispatch.

**SO ORDERED.**

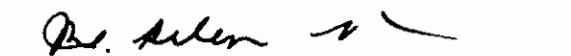


**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice

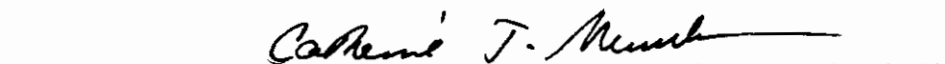
**WE CONCUR:**



**ROMAN G. DEL ROSARIO**  
Presiding Justice




**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice



*(I dissent and reiterate my Decision dated February 11, 2022)*  
**CATHERINE T. MANAHAN**  
Associate Justice



**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice



**MARIAN IV F. REYES-FAJARDO**  
Associate Justice

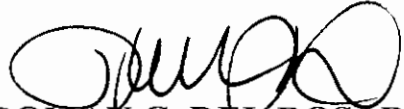
**ON OFFICIAL BUSINESS**  
**LANEE S. CUI-DAVID**  
Associate Justice

*(with all due respect, please see my Dissenting Opinion)*  
**CORAZON G. FERRER-FLORES**  
Associate Justice

**ON OFFICIAL BUSINESS**  
**HENRY S. ANGELES**  
Associate Justice

**CERTIFICATION**

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

BANGKO SENTRAL NG  
PILIPINAS.,

Petitioner,

CTA EB NO. 2687  
(CTA Case No. 10083)

*Present:*

- versus -

DEL ROSARIO, P.J.,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO,  
REYES-FAJARDO,  
CUI-DAVID,  
FERRER-FLORES, *and*  
ANGELES, JJ.

COMMISSIONER OF  
INTERNAL REVENUE,  
Respondent.

Promulgated:

FEB 21 2024

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DISSENTING OPINION

***FERRER-FLORES, J.:***

With due respect to our esteemed colleague, Honorable Associate Justice Maria Rowena Modesto-San Pedro, I am constrained to withhold my assent on the *ponencia*.

In the instant petition, petitioner *Bangko Sentral ng Pilipinas* (BSP) claims that the Court of Tax Appeals (CTA) has jurisdiction over its claim for overpayment of Capital Gains Tax (CGT), surcharge and interest. It posits that, contrary to the assailed Decision, Presidential Decree (P.D.) No. 242<sup>1</sup> is not applicable to the BSP arguing that Republic Act (R.A.) No. 1125,<sup>2</sup> as amended by R.A. No. 9282,<sup>3</sup> being both a special law specifically

<sup>1</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. Issued on July 9, 1973.

<sup>2</sup> An Act Creating the Court of Tax Appeals. Issued on June 16, 1954.

<sup>3</sup> 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. Issued on March 30 2004.



enumerating the expanded jurisdiction of the CTA and a later law, prevails over the earlier and more general provisions of P.D. No. 242 and the 1987 Administrative Code.

In the Decision penned by Honorable Associate Justice Modesto-San Pedro, it was held that the CTA has jurisdiction to take cognizance over BSP's claim. The Court cited the case *The Department of Energy (DOE) vs. Court of Tax Appeals (DOE case)*,<sup>4</sup> where the Supreme Court discussed that P.D. No. 242 is designed to resolve disputes solely between offices, agencies, and government-owned and controlled corporations (GOCCs) under the President's control and supervision. In the *ponencia*, the Court found that BSP is not under the President's executive control and supervision pursuant to Section 20, Article XII of the 1987 Constitution, Sections 1 and 2 of R.A. No. 7653 (The New Central Bank Act) and the case of *Bangko Sentral ng Pilipinas vs. Commission on Audit (BSP case)*;<sup>5</sup> hence, P.D. No. 242 is not applicable to the BSP.

I respectfully disagree.

In the *DOE case*,<sup>6</sup> the Supreme Court, citing *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*<sup>7</sup> (*PSALM case*), has categorically ruled that P.D. No. 242 prevails over R.A. No. 1125, to wit:

***Special Laws prevail over General Laws***

**P.D. No. 242, as incorporated in the Revised Administrative Code in Chapter 14, Book IV, should prevail as against laws defining the general jurisdiction of the CTA, i.e., R.A. No. 1125, as amended, and the NIRC. This is consistent with the fundamental rule that special laws prevail over general laws. P.D. No. 242 deals specifically with the resolution of disputes, claims, and controversies where the parties involved are the various departments, bureaus, offices, agencies, and instrumentalities of the government. P.D. No. 242 should be read as an exception to the general rule set in R.A. No. 1125 and the NIRC that the CTA has jurisdiction over tax disputes involving laws administered by the BIR.**

The Court has defined a general law as "a law which applies to all of the people of the state or to all of a particular class of persons in the state, with equal force and obligation." In *Valera v. Tuason, et al.*, it was also described as "one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class." On the other hand, a special law is one which "applies to particular individuals in the state or to a particular section or portion of the state only" and which "relates to particular persons or things of a class." As the Court has consistently

<sup>4</sup> G.R. No. 260912, August 12, 2022.

<sup>5</sup> G.R. No. 210314, October 12, 2021.

<sup>6</sup> See note 1.

<sup>7</sup> G.R. No. 198146, August 8, 2017.

held, where there are two laws which appear to apply to the same subject and where one law is general and the other special, the law specially designed for the particular subject must prevail over the other. Stated more simply, the special law prevails over the general law. *Generalia specialibus non derogant*.

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Here, the NIRC and R.A. No. 1125, and specifically their provisions on the jurisdiction of the CTA over tax disputes involving tax laws enforced by the BIR, should be read as general provisions governing the settlement of disputes involving tax claims. These provisions apply to the resolution of this general class of tax cases involving all persons, without exception. Stated more simply, they apply with equal force to *all persons* involved in disputes pertaining to *all tax claims* arising from *all tax laws* being implemented by the BIR.

In clear contrast, P.D. No. 242, as now embodied in the Revised Administrative Code, applies only to particular persons involved in a uniquely specific category of cases — disputes, claims, and controversies where all the parties are government entities. The Court's ruling in *City of Manila v. Teotico, Bagatsing v. Ramirez*, and other similar cases, dictate that an interpretation of P.D. No. 242 as a special law that functions as an exception to the general rule on the jurisdiction of courts, such as the CTA, to resolve disputes. Where the dispute involves government entities on opposing sides, P.D. No. 242, as embodied in the Revised Administrative Code, determines, in the first instance, the mode of dispute resolution.

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

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

WHEREAS, court cases involving the said government entities and instrumentalities have needlessly contributed to the clogged dockets of the courts, aside from dissipating or wasting the time and energies not only of the courts but also of the government lawyers and the considerable expenses incurred in the filing and prosecution of judicial actions"; (emphasis supplied)

In the performance of our Constitutional duty to interpret the laws, it is essential that the Court do so with due regard to legislative intent. Given the purpose animating the enactment of P.D. No. 242, the Court must read it as a special law intended to govern the resolution of disputes involving


government agencies. It is only by reading P.D. No. 242 as an exception to the general rule governing the jurisdiction of the CTA over tax disputes that the Court will be able to respect and uphold the legislative intent to submit all inter-governmental disputes to the jurisdiction of the Executive in the pursuit of avoiding litigation in cases where the opposing parties ultimately represent the government as the sole real party-in-interest. A contrary reading of P.D. No. 242 would defeat the purpose for its enactment as an entire class of cases (*i.e.*, tax cases under the jurisdiction of the CTA) would operate outside its ambit, thereby significantly limiting the Government's ability to resolve internal disputes and further clogging the CTA's dockets.

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

Based on the foregoing, with the promulgation of the *PSALM* case on August 8, 2017, P.D. No. 242 shall be read as the exception to the general jurisdiction of the CTA over tax cases. Considering that the original Petition for Review was filed by the BSP on May 22, 2019, after the promulgation of the *PSALM* case, **P.D. No. 242 should be considered as the prevailing law in determining whether the CTA has jurisdiction over the dispute.**

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

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

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

There is no dispute that the Bureau of Internal Revenue (BIR) is among those enumerated in P.D. No. 242. The issue lies with the legal status of BSP as a government entity. In the *ponencia*, it was held that, while the BSP is a government-owned corporation, it is not a government office, agency, or GOCC under the supervision and control of the Executive Branch; thus, it is not covered by P.D. No. 242.

On this point, I respectfully disagree. After evaluation of the facts, applicable laws, and jurisprudence, it is my position that the BSP is a **government instrumentality**.

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

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

xxx

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

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

SECTION 1. *Declaration of Policy*. - The State shall maintain a central monetary authority that shall **function and operate as an independent and accountable body corporate** in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, **the central monetary authority established under this Act, while being a government-owned corporation, shall enjoy fiscal and administrative autonomy**.

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SECTION 5. *Corporate Powers*. — The Bangko Sentral is hereby authorized to adopt, alter, and use a corporate seal which shall be judicially noticed; to enter into contracts; to lease or own real and personal property, and to sell or otherwise dispose of the same; to sue and be sued; and otherwise to do and perform any and all things that may be necessary or proper to carry out the purposes of this Act.

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The Bangko Sentral may acquire and hold such assets and incur such liabilities in connection with its operations authorized by the provisions of this Act, or as are essential to the proper conduct of such operations.

The Bangko Sentral may compromise, condone or release, in whole or in part, any claim of or settled liability to the Bangko Sentral, regardless of the amount involved, under such terms and conditions as may be prescribed by the Monetary Board to protect the interests of the Bangko Sentral. (*Emphasis supplied*)

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

In the *BSP* case,<sup>8</sup> also cited in the *ponencia*, the Supreme Court shed some light as to the legal status of the BSP and categorically ruled that the BSP is not a GOCC, applying the parameters set in the case of *Manila International Airport Authority (MIAA) vs. Court of Appeals*,<sup>9</sup> promulgated on July 20, 2006, (**2006 MIAA case**), viz:

In the 2006 case of *Manila International Airport Authority v. Court of Appeals*, the Court had the occasion to interpret and apply the foregoing definition in the Administrative Code when it was confronted with the question of whether Manila International Airport Authority (MIAA) is a GOCC and is thus not exempt from real estate tax. In resolving the issue, the Court explained that a GOCC must be organized as a stock or non-stock corporation, as expressly stated in the definition. It further explained that under the Corporation Code, to be classified as a stock corporation, an entity must have capital stock divided into shares and must be authorized to distribute dividends and allotments of surplus and profits to its stockholders. On the other hand, to be classified as a non-stock corporation, it must have members and must not distribute any part of its income to said members. Since MIAA is not organized as a stock or non-stock corporation, the Court held that it is not a GOCC:

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Applying the parameters in *Manila International Airport Authority v. Court of Appeals*, the Court has since disqualified many entities from being classified as GOCCs, including the Philippine Fisheries Development Authority, the Philippine Ports Authority, the Government Service Insurance System, the Philippine Reclamation Authority, the Manila Economic & Cultural Office, the Mactan-Cebu International Airport Authority, the Bases Conversion and Development Authority, the Executive Committee of the Metro Manila Film Festival, and the Light Rail Transit Authority. ¶

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<sup>8</sup> See note 2.

<sup>9</sup> G.R. No. 155650, July 20, 2006.

After applying the same parameters, we find that the BSP does not qualify as a GOCC as defined under the Administrative Code and RA 7656.

**First**, the BSP is not organized as a stock corporation. The capitalization of the BSP is provided under Section 2 of RA 7653, as amended by RA 11211:

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Thus, while the BSP has capital under Section 2 of the BSP Charter, it does not have capital stock or share capital. Further, its capital is not divided into shares of stocks. There are no stockholders or voting shares. Hence, the BSP cannot be classified as a stock corporation.

**Second**, the BSP is not a non-stock corporation. It does not have members. Even assuming that the government may be considered as the sole member of the BSP, this will not make the BSP a non-stock corporation because the BSP Charter mandates it to remit 50% of its net profits to the National Treasury, in conflict with the provision that non-stock corporations do not distribute any part of their income to their members.

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

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

Referring now to the *2006 MIAA* case,<sup>10</sup> it is noted that the Supreme Court, after concluding that MIAA is not a GOCC, proceeded to elucidate on the legal status of MIAA within the National Government, to wit:

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

MIAA is a **government instrumentality vested with corporate powers to perform efficiently its governmental functions**. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government “**instrumentality**” as follows:

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<sup>10</sup> See note 6.

SEC. 2. *General Terms Defined.* — x x x

(10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy, usually through a charter. x x x (Emphasis supplied)

**When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation**, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises “all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order.”

Likewise, **when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework.** The MIAA Charter expressly states that transforming MIAA into a ‘separate and autonomous body’ will make its operation more ‘financially viable.’

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

Similarly, the BSP is a government instrumentality which is granted with corporate powers<sup>11</sup> and is enjoying fiscal and administrative autonomy.<sup>12</sup> Nonetheless, even if it enjoys fiscal and administrative autonomy, the BSP, as an instrumentality, still remains part of the National Government machinery, as also aptly pointed out by the Honorable Supreme Court Justice Amy Lazaro-Javier in her Separate Concurring Opinion in the *BSP* case.

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


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

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<sup>11</sup> Section 5 of R.A. No. 7653.

<sup>12</sup> Section 1 of R.A. No. 7653.

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

  
**CORAZON G. FERRER-FLORES**  
Associate Justice