REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

DAVAO CITY WATER DISTRICT, Petitioner,	**CTA CASE NOS. 9138, 9139, 9140, 9141, 9142 & 9143**
	Members:
- versus -	**UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 06 2022 2:02 p.m.

x----------x

DECISION

RINGPIS-LIBAN, J.:

The Case

These consolidated *Petitions for Review* seek the refund of the franchise tax payments made for the taxable years 2003, 2006, 2007, 2009, 2010 and 2011, in the amounts of ₱4,682,408.28; ₱3,658,126.69; ₱6,988,083.88; ₱7,940,076.52; ₱8,481,294.87; and ₱8,636,329.00, respectively.[1]

The Parties

Petitioner Davao City Water District is a government public water utility created pursuant to Presidential Decree (PD) No. 198, as amended,[2] for the supply and delivery of potable water in Davao City.[3]

---

[1] Refer to the Summary of the Case, Pre-Trial Order dated May 19, 2016, Docket (CTA Case No. 9138) – Vol. 1, pp. 440 to 441.
[2] Provincial Water Utilities Act of 1973.

Respondent Commissioner of Internal Revenue, on the other hand, is the head of the Bureau of Internal Revenue (BIR), and is mandated, among others, to assess and collect taxes, fees and charges, and account for all revenues collected as well as to refund taxes erroneously paid.[4]

The Facts

For taxable years 2003, 2006, 2007, 2009, 2010, and 2011, petitioner paid forty percent (40%) of the basic franchise tax for each of the said taxable years.[5] The payments were offered for purpose of compromise, and were made pursuant to Revenue Regulations (RR) No. 30-2002 dated December 16, 2002.[6] The details of the said payments are as follows, to wit:

Dates of Payment	Amounts	Taxable Years
February 27, 2014[7]	₱4,682,408.28	2003
December 9, 2013[8]	₱3,658,126.69	2006
September 26, 2013[9]	₱6,988,083.88	2007
February 27, 2014[10]	₱7,940,076.52	2009
February 27, 2014[11]	₱8,481,294.87	2010
December 9, 2013[12]	₱8,636,329.00	2011

On February 11, 2015, petitioner separately filed its *Claims for Refund*, all dated January 26, 2015, in the respective amounts of: (a) ₱4,682,408.28 for taxable year 2003;[13] (b) ₱3,658,126.69 for taxable year 2006;[14] (c) ₱6,988,083.88

---

[3] Par. 2, Summary of Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket (CTA Case No. 9138) – Vol. 1, p. 419.
[4] Par. 3, Summary of Stipulated Facts, JSFI, Docket (CTA Case No. 9138) – Vol. 1, p. 419.
[5] As stipulated by the parties during the hearing held on September 10, 2018 [Minutes of the hearing held on, and Order dated, September 10, 2018, Docket (CTA Case No. 9138) – Vol. 2, pp. 645 to 647].
[6] *Id.*
[7] Exhibits "P-11" to "P-14", Docket (CTA Case No. 9138) – Vol. 1, pp. 348 to 351.
[8] Exhibits "P-17" to "P-19", Docket (CTA Case No. 9138) – Vol. 1, pp. 354 to 356.
[9] Exhibits "P-22" to "P-24", Docket (CTA Case No. 9138) – Vol. 1, pp. 359 to 361.
[10] Exhibits "P-27" to "P-30", Docket (CTA Case No. 9138) – Vol. 1, pp. 364 to 367.
[11] Exhibits "P-33" to "P-36", Docket (CTA Case No. 9138) – Vol. 1, pp. 370 to 373.
[12] Exhibits "P-39" to "P-41", Docket (CTA Case No. 9138) – Vol. 1, pp. 376 to 378.
[13] Exhibits "P-3", "P-3-A", "P-3-B" and "P-3-C", Docket (CTA Case No. 9138) – Vol. 1, pp. 184 to 204.
[14] Exhibits "P-4", "P-4-A", "P-4-B" and "P-4-C", Docket (CTA Case No. 9138) – Vol. 1, pp. 212 to 232.

for taxable year 2007;[15] (d) ₱7,940,076.52 for taxable year 2009;[16] (e) ₱8,481,294.87 for taxable year 2010;[17] and (f) ₱8,636,329.00 for taxable year 2011.[18]

On September 8, 2015, petitioner filed six (6) separate *Petitions for Review* docketed as CTA Case Nos. 9138 (for the claim for taxable year 2003),[19] 9139 (for the claim for taxable year 2006),[20] 9140 (for the claim for taxable year 2007),[21] 9141 (for the claim for taxable year 2009),[22] 9142 (for the claim for taxable year 2010),[23] and 9143 (for the claim for taxable year 2011).[24]

CTA Case Nos. 9138, 9139, and 9140 were raffled to this Court's Division; while CTA Case Nos. 9141 and 9142 were raffled to the Second Division of this Court.

For an orderly presentation, the Court deems it proper to state the proceedings that took place for each case prior to the consolidation of the present cases.

CTA Case Nos. 9138

On November 9, 2015, respondent filed his *Answer*,[25] interposing certain special and affirmative defenses, to wit: (1) petitioner, as a local water district was organized pursuant to the provisions of PD No. 198, as amended; (2) petitioner is a franchisee and therefore liable to pay franchise tax; (3) Republic Act (RA) No. 7109 limited the tax exemption privileges of local water districts (LWDs); and (4) in a case of refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

---

[15] Exhibits "P-5", "P-5-A", "P-5-B" and "P-5-C", Docket (CTA Case No. 9138) – Vol. 1, pp. 233 to 252.
[16] Exhibits "P-6", "P-6-A", "P-6-B" and "P-6-C", Docket (CTA Case No. 9138) – Vol. 1, pp. 258 to 277.
[17] Exhibits "P-7", "P-7-A", "P-7-B" and "P-7-C", Docket (CTA Case No. 9138) – Vol. 1, pp. 283 to 302.
[18] Exhibits "P-8", "P-8-A", "P-8-B" and "P-8-C", Docket (CTA Case No. 9138) – Vol. 1, pp. 309 to 328.
[19] Docket (CTA Case No. 9138) – Vol. 1, pp. 12 to 31.
[20] Docket (CTA Case No. 9139), pp. 12 to 31.
[21] Docket (CTA Case No. 9140), pp. 12 to 31.
[22] Docket (CTA Case No. 9141), pp. 12 to 31.
[23] Docket (CTA Case No. 9142), pp. 12 to 31.
[24] Docket (CTA Case No. 9143), pp. 12 to 31.
[25] Docket (CTA Case No. 9138) – Vol. 1, pp. 71 to 87.

The Pre-Trial Conference was initially set on February 23, 2016.[26]

On December 4, 2015, petitioner posted its *Motion for Consolidation* of CTA Case Nos. 9138, 9139, 9140, 9141 and 9142.[27] Subsequently, on December 17, 2015, petitioner posted its *Amended Motion for Consolidation* of CTA Case Nos. 9138, 9139, 9140, 9141 and 9142 with CTA Case No. 9143,[28] for the purposes of expediency and sound judicial policy to avoid the possibility of rendition of two (2) conflicting decisions over the cases involving essentially the same facts and laws. Respondent, however, failed to comment on both *Motions*.[29]

Thereafter, on January 20, 2016, petitioner filed its *Motion for Resetting* of the Pre-Trial Conference,[30] in view of the pendency of its *Motion for Consolidation*.

In the Resolution dated January 21, 2016,[31] the Court granted petitioner's prayer to consolidate CTA Case Nos. 9138, 9139, 9140, 9141, 9142 and 9143, subject to the conformity of the *ponente*.

In the Resolution dated January 29, 2016,[32] the Court granted petitioner's *Motion for Resetting*, and accordingly reset the Pre-Trial Conference to April 12, 2016.

Respondent's Pre-Trial Brief was filed on February 9, 2016.[33]

CTA Case No. 9139

Petitioner posted its *Motion for Consolidation* on December 4, 2015.[34] Thereafter, petitioner posted its *Amended Motion for Consolidation* on December 17, 2015.[35]

---

[26] *Notice of Pre-Trial Conference* dated November 12, 2015, Docket (CTA Case No. 9138) – Vol. 1, pp. 89 to 90.
[27] Docket (CTA Case No. 9138) – Vol. 1, pp. 99 to 102.
[28] Docket (CTA Case No. 9138) – Vol. 1, pp. 108 to 112.
[29] Records of Verification dated February 2, 2016 issued by the Judicial Records Division of the Court, Docket (CTA Case No. 9138) – Vol. 1, p. 138.
[30] Docket (CTA Case No. 9138) – Vol. 1, pp. 120 to 123.
[31] Docket (CTA Case No. 9138) – Vol. 1, pp. 127 to 128.
[32] Docket (CTA Case No. 9138) – Vol. 1, p. 137.
[33] Docket (CTA Case No. 9138) – Vol. 1, pp. 139 to 142.
[34] Docket (CTA Case No. 9139), pp. 78 to 81.
[35] Docket (CTA Case No. 9139), pp. 90 to 94.

In the Resolution dated January 21, 2016,[36] the Court granted petitioner's prayer to consolidate CTA Case No. 9139 with CTA Case Nos. 9138, 9140, 9141, 9142, and 9143, subject to the conformity of the *ponente.*

On March 21, 2016, respondent filed his *Answer,*[37] interposing certain special and affirmative defenses, to wit: (1) the Court has no jurisdiction to determine whether petitioner is a franchisee under the provisions of the Constitution; (2) petitioner is liable for franchise tax; and (3) there is no law exempting petitioner from franchise tax.

CTA Case No. 9140

On November 9, 2015, respondent filed his *Answer,*[38] interposing the same special and affirmative defenses he raised in his *Answer* in CTA Case No. 9138.

The Pre-Trial Conference was initially set on February 23, 2016.[39]

Petitioner posted its *Amended Motion for Consolidation* on December 17, 2015,[40] praying for the consolidation of the six (6) cases, reiterating that it is for purposes of expediency and sound judicial policy to avoid the possibility of rendition of two (2) conflicting decisions over the cases involving essentially the same facts and laws.

Further, on January 19, 2016, petitioner posted its *Motion for Resetting* of the Pre-Trial Conference.[41]

Respondent filed his *Manifestation (re: petitioner's Motion for Consolidation and Amended Motion for Consolidation)* on January 21, 2016.[42]

In the Resolution dated January 27, 2016,[43] the Court granted petitioner's *Motion for Resetting,* and reset the Pre-Trial Conference to April 12, 2016.

---

[36] Docket (CTA Case No. 9139), pp. 99 to 100.
[37] Docket (CTA Case No. 9139), pp. 107 to 115.
[38] Docket (CTA Case No. 9140), pp. 68 to 84.
[39] *Notice of Pre-Trial Conference* dated November 12, 2015, Docket (CTA Case No. 9140), pp. 86 to 87.
[40] Docket (CTA Case No. 9140), pp. 99 to 103.
[41] Docket (CTA Case No. 9140), pp. 121 to 124 (and 110 to 113).
[42] Docket (CTA Case No. 9140), pp. 116 to 117.
[43] Docket (CTA Case No. 9140), p. 120.

Respondent's Pre-Trial Brief was filed on February 9, 2016.[44]

In the Resolution dated February 24, 2016,[45] the Court granted the consolidation of CTA Case No. 9140 with CTA Case No. 9138.

CTA Case No. 9141

Respondent filed his *Answer* on November 23, 2015,[46] interposing certain special and affirmative defenses, to wit: (1) petitioner is a government-owned and controlled corporation with primary and secondary franchises liable for franchise tax; and (2) a claim for exemption is never favored, hence, an exempting provision should be construed *strictissimi juris* against a taxpayer.

The Pre-Trial Conference was initially set on February 4, 2016.[47]

Petitioner posted its *Amended Motion for Consolidation* on December 17, 2015,[48] praying for the consolidation of the six (6) cases still for purposes of expediency and sound judicial policy.

Respondent's Pre-Trial Brief was filed on January 15, 2016.[49]

Respondent filed his *Comment (Re: Petitioner's Motion for Consolidation)* on January 22, 2016.[50]

On January 22, 2016, petitioner filed its *Motion for Resetting* of the Pre-Trial Conference.[51] In its Order dated January 25, 2016,[52] the Court granted the said *Motion.*

In the Resolution dated January 29, 2016,[53] the Court granted petitioner's *Amended Motion for Consolidation* and ordered the consolidation of CTA Case No. 9141 with CTA Case No. 9138, subject to the conformity of this Court's Division.

---

[44] Docket (CTA Case No. 9140), pp. 127 to 130.
[45] Docket (CTA Case No. 9140), pp. 137 to 139.
[46] Docket (CTA Case No. 9141), pp. 74 to 82.
[47] *Notice of Pre-Trial Conference* dated November 26, 2015, Docket (CTA Case No. 9141), pp. 84 to 85.
[48] Docket (CTA Case No. 9141), pp. 94 to 98.
[49] Docket (CTA Case No. 9141), pp. 115 to 118.
[50] Docket (CTA Case No. 9141), pp. 122 to 124.
[51] Docket (CTA Case No. 9141), pp. 126 to 129.
[52] Docket (CTA Case No. 9141), p. 131.
[53] Docket (CTA Case No. 9141), p. 136.

CTA Case No. 9142

Respondent filed his *Answer (with Motion to Admit)* on December 7, 2015,[54] interposing, *inter alia*, certain special and affirmative defenses, to wit: (1) in order to be entitled to the refund being sought, petitioner must satisfactorily comply with the two (2)-year prescriptive period as provided under Section 204(c) in relation to Section 229 of the National of Internal Revenue Code (NIRC) of 1997; and (2) that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed *strictissimi juris* against the person or entity claiming the exemption, as entitlement to a tax refund is for the taxpayer to prove and for the government to disprove.

The Pre-Trial Conference was initially set on February 4, 2016.[55]

Petitioner posted its *Motion for Consolidation* on December 4, 2015.[56] Thereafter, petitioner posted its *Amended Motion for Consolidation* on December 17, 2015,[57] praying for the consolidation of the six (6) cases for the same purposes of expediency and sound judicial policy. Respondent filed his *Comment* to petitioner's *Amended Motion for Consolidation* on February 4, 2016.[58]

On January 21, 2016, petitioner filed its *Motion for Resetting* of the Pre-Trial Conference[59] which was granted by the Court in its Order dated January 22, 2016.[60]

In the Resolution dated February 10, 2016,[61] the Court granted the consolidation of CTA Case No. 9142 with CTA Case No. 9138, subject to the conformity of this Court's Division.

CTA Case No. 9143

Respondent posted his *Answer* on November 5, 2015,[62] interposing the same special and affirmative defenses as that he raised in his *Answer* in CTA Case No. 9138.

---

[54] Docket (CTA Case No. 9142), pp. 80 to 86.
[55] *Notice of Pre-Trial Conference* dated December 11, 2015, Docket (CTA Case No. 9142), pp. 88 to 89.
[56] Docket (CTA Case No. 9142), pp. 91 to 94.
[57] Docket (CTA Case No. 9142), pp. 98 to 102.
[58] Docket (CTA Case No. 9142), pp. 123 to 125.
[59] Docket (CTA Case No. 9142), pp. 107 to 109.
[60] Docket (CTA Case No. 9142), p. 112.
[61] Docket (CTA Case No. 9142), p. 127.

The Pre-Trial Conference was initially set on February 3, 2016.[63]

On December 17, 2015, petitioner posted its *Motion for Consolidation,*[64] praying for the consolidation of the six (6) cases, again for purposes of expediency and sound judicial policy to avoid the possibility of rendition of two (2) conflicting decisions over the cases involving essentially the same facts and laws.

In the Resolution dated January 28, 2016,[65] the Court granted the consolidation of CTA Case No. 9143 with CTA Case No. 9138, subject to the conformity of this Division, and cancelled the scheduled Pre-Trial Conference.

Respondent's Pre-Trial Brief was filed on February 5, 2016.[66]

Consolidated Cases

In the Resolution dated February 24, 2016,[67] the Court declared that it has no objection on the consolidation of the six (6) cases docketed as CTA Case Nos. 9138, 9139, 9140, 9141, 9142, and 9143.

In the Resolution dated March 31, 2016,[68] the Court directed that the Pre-Trial Conference previously set on April 12, 2016 shall proceed as scheduled; and order the parties their respective consolidated *Pre-Trial Briefs.*

Thus, *Respondent's Consolidated Pre-Trial Brief* was filed on April 7, 2016;[69] and the *Consolidated Pre-Trial Brief for Petitioner* was submitted on April 8, 2016.[70] The Pre-Trial Conference indeed proceeded as scheduled.[71]

On April 27, 2016, the parties presented their *Joint Stipulation of Facts and Issues.*[72]

---

[62] Docket (CTA Case No. 9143), pp. 88 to 105.
[63] Resolution dated November 13, 2015, Docket (CTA Case No. 9143), p. 110.
[64] Docket (CTA Case No. 9143), pp. 116 to 119.
[65] Docket (CTA Case No. 9143), pp. 149 to 150.
[66] Docket (CTA Case No. 9143), pp. 159 to 161.
[67] Docket (CTA Case No. 9138) – Vol. 1, pp. 146 to 148.
[68] Docket (CTA Case No. 9138) – Vol. 1, pp. 160 to 161.
[69] Docket (CTA Case No. 9138) – Vol. 1, pp. 162 to 164.
[70] Docket (CTA Case No. 9138) – Vol. 1, pp. 165 to 171.
[71] Minutes of the hearing held on dated April 12, 2016, Docket (CTA Case No. 9138) – Vol. 1, p. 407; Resolution dated April 18, 2016, Docket (CTA Case No. 9138) – Vol. 1, pp. 414 to 415.
[72] Docket (CTA Case No. 9138) – Vol. 1, pp. 419 to 432.

In the Resolution dated May 6, 2016,[73] the Court, in view of the consolidation of the present cases, ordered respondent to certify and elevate to the Court the entire *BIR Records* of the consolidated cases, within a final and non-extendible period of ten (10) days from receipt, otherwise, respondent should show cause why he should not be cited in contempt for failure to comply with a lawful order of the Court.

The Pre-Trial Order was subsequently issued on May 19, 2016.[74]

On May 23, 2016, respondent filed his *Manifestation,*[75] stating that no *BIR Records* were transmitted by BIR Revenue Region No. 9, despite notice. The said *Manifestation* was noted by the Court, but directed respondent to exert utmost effort to transmit the *BIR Records* to the Court as soon as the same are received, per its Resolution dated June 8, 2016.[76]

Trial then ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimony of the following individuals, namely: (1) Mr. Engr. Edwin V. Regalado,[77] petitioner's General Manager; (2) Mr. Hilton P. Husain,[78] OIC-Manager of petitioner's Accounting Department; and (3) Mr. Siegfred G. Medina,[79] petitioner's driver-messenger.

Petitioner posted its *Formal Offer of Exhibits* on December 9, 2016.[80] Respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on December 28, 2016.[81] In the Resolution dated February 13, 2017,[82] the Court admitted the exhibits formally offered by petitioner.

---

[73] Docket (CTA Case No. 9138) – Vol. 1, pp. 434 to 437.
[74] Docket (CTA Case No. 9138) – Vol. 1, pp. 440 to 450.
[75] Docket (CTA Case No. 9138) – Vol. 1, pp. 451 to 452.
[76] Docket (CTA Case No. 9138) – Vol. 1, p. 465.
[77] Exhibit "P-1", Docket (CTA Case No. 9138) – Vol. 1, pp. 173 to 182; Minutes of the hearing held on, and Order dated, November 29, 2016, Docket (CTA Case No. 9138) – Vol, 2, pp. 503 to 505.
[78] Exhibit "P-9", Docket (CTA Case No. 9138) – Vol. 1, pp. 333 to 346; Minutes of the hearing held on, and Order dated, July 26, 2016, Docket (CTA Case No. 9138) – Vol. 1, pp. 477 and 479, respectively.
[79] Exhibit "P-44", Docket (CTA Case No. 9138) – Vol. 1, pp. 381 to 390; Minutes of the hearing held on, and Order dated, August 23, 2016, Docket (CTA Case No. 9138) – Vol. 1, pp. 480 to 481.
[80] Docket (CTA Case No. 9138) – Vol. 2, pp. 507 to 532.
[81] Docket (CTA Case No. 9138) – Vol. 2, pp. 534 to 535.
[82] Docket (CTA Case No. 9138) – Vol. 2, pp. 537 to 538.

Respondent transmitted the *BIR Records* for the present consolidated cases via his *Manifestation (Re: Submission of BIR Records)* filed June 27, 2017,[83] *Compliance* filed on May 7, 2018,[84] and *Compliance* filed on May 25, 2018.[85]

For his part, respondent also presented his documentary and testimonial evidence. He offered the testimonies of Revenue Officers Marilou E. Cubero[86] and Christine Diwata T. Camiña.[87]

Respondent filed his *Formal Offer of Evidence* on September 25, 2018.[88] Petitioner, however, failed to file its comment thereon.[89]

Petitioner posted its *Manifestation and/or Motion to Suspend Proceedings* on November 29, 2018,[90] wherein it manifested, *inter alia*, that on October 1, 2018, petitioner's Office of the General Manager received the letter dated September 7, 2018 from the BIR, informing petitioner that its application for compromise settlement under RR No. 30-2002, involving the amount of ₱13,032,076.33, representing deficiency franchise tax liabilities for taxable year 2006, was approved, attaching therewith the *Certificate of Availment (Compromise Settlement)* dated September 7, 2018 signed by Mr. Alfredo V. Misajon, ACIR – Collection Service and Head, TWG on Compromise; that petitioner intend to make earnest efforts to secure similar approval from the BIR for the other taxable years involved in this case (*i.e.*, 2003, 2007, 2009, 2010, and 2011); and that petitioner will be needing more time in pursuing such efforts.

Respondent, however, failed to file his comment on the said *Manifestation and/or Motion to Suspend Proceedings.*[91]

In the Resolution dated March 26, 2019,[92] the Court noted its *Manifestation*, but denied the *Motion to Suspend Proceedings.* However, the parties

---

[83] Docket (CTA Case No. 9138) – Vol. 2, pp. 566 to 567.
[84] Docket (CTA Case No. 9138) – Vol. 2, pp. 628 to 630.
[85] Docket (CTA Case No. 9138) – Vol. 2, pp. 637 to 639.
[86] Exhibit "R-10", Docket (CTA Case No. 9138) – Vol. 2, pp. 580 to 588; Minutes of the hearing held on, and Order dated, October 10, 2017, Docket (CTA Case No. 9138) – Vol. 2, pp. 599 to 600; Exhibit "R-20", Docket (CTA Case No. 9138) – Vol. 2, pp. 607 to 614; Minutes of the hearing held on, and Order dated, May 7, 2018, Docket (CTA Case No. 9138) – Vol. 2, pp. 633 to 635.
[87] Exhibit "R-19", Docket (CTA Case No. 9138) – Vol. 2, pp. 619 to 624; Minutes of the hearing held on, and Order dated, May 7, 2018, Docket (CTA Case No. 9138) – Vol. 2, pp. 633 to 635.
[88] Docket (CTA Case No. 9138) – Vol. 2, pp. 651 to 655.
[89] Records Verification Report dated November 6, 2018 issued by the Judicial Records Division of the Court, Docket (CTA Case No. 9138) – Vol. 2, p. 657.
[90] Docket (CTA Case No. 9138) – Vol. 2, pp. 658 to 663.
[91] Records Verification Report dated January 10, 2019 issued by the Judicial Records Division of the Court, Docket (CTA Case No. 9138) – Vol. 2, p. 750.
[92] Docket (CTA Case No. 9138) – Vol. 2, pp. 762 to 765.

were given a period of thirty (30) days from notice, within which to enter a possible judicial compromise in relation to the cases, and in case no compromise is reached, petitioner was given a fresh period of ten (10) days to file its comment to respondent's *Formal Offer of Evidence.* The Court also directed petitioner's counsel to submit, within ten (10) days from notice, a certified true copy of the *Certificate of Availment*, and a copy of the authority by the BIR's National Evaluation Board, authorizing Mr. Alfredo V. Misajon to issue a *Certificate of Availment.*

After the posting of petitioner's *Compliance* dated July 15, 2019 on July 16, 2016,[93] the Court, in its Resolution dated August 5, 2019,[94] the Court closed and terminated CTA Case No. 9139, involving a claim for refund of petitioner's franchise tax for taxable year 2006. The Court, on the other hand, ruled that since the thirty (30)-day period given to the parties to enter into a judicial compromise already lapsed, the proceedings in CTA Case Nos. 9138, 9140, 9141, 9142 and 9143 shall proceed accordingly. Moreover, in the Resolution, petitioner was given a period of ten (10) days from notice within which to file its comment/opposition to respondent's *Formal Offer of Evidence.* Petitioner, however, failed to file its comment to respondent's *Formal Offer of Evidence.*[95]

In the Resolution dated July 21, 2020,[96] the Court admitted respondent's exhibits, *except* Exhibit "R-2", for being a mere photocopy.

Respondent's *Memorandum* was posted on September 25, 2020;[97] while petitioner's *Memorandum* was posted on January 20, 2021.[98]

On June 23, 2021, these consolidated cases were submitted for decision.[99]

The Issues

The parties stipulated the following issues for the Court's resolution, to wit:

---

[93] Docket (CTA Case No. 9138) – Vol. 3, pp. 1086 to 1089.
[94] Docket (CTA Case No. 9138) – Vol. 3, pp. 1095 to 1097.
[95] Records Verification Report dated January 24, 2020 issued by the Judicial Records Division of the Court, Docket (CTA Case No. 9138) – Vol. 3, p. 1098.
[96] Docket (CTA Case No. 9138) – Vol. 3, pp. 1102 to 1103.
[97] Docket (CTA Case No. 9138) – Vol. 3, pp. 1104 to 1107.
[98] Docket (CTA Case No. 9138) – Vol. 3, pp. 1112 to 1140.
[99] Resolution dated June 23, 2021, Docket (CTA Case No. 9138) – Vol. 3, p. 1151.

"1. Whether the Honorable Court has jurisdiction to hear and decide on the lone legal issue presented by petitioner – 'Whether or not the franchise tax mentioned under Section 119 of the Tax Code may be assessed and imposed on petitioner.'

2. Whether petitioner is entitled to a refund or tax credit of franchise tax allegedly paid in the following amount corresponding to each year:

For the Year	40% of the Tax Due Paid
2003	Four Million Six Hundred Eighty Two Thousand Four Hundred Eight Pesos and 28/100 Centavos. (PhP 4,682,408.28)
2006	Three Million Six Hundred Fifty – Eight Thousand One Hundred Twenty – Six Pesos and 69/100 Centavos. (PhP 3,658,126.69)
2007	Six Million Nine Hundred Eighty-Eight Thousand Eighty-Three Pesos and 88/100 Centavos. (PhP 6,988,083.88)
2009	Seven Million Nine Hundred Forty Thousand Seventy-Six Pesos and 52/100 Centavos. (PhP 7,940,076.52)
2010	Eight Million Four Hundred Eighty-One Thousand Two Hundred Ninety-Four Pesos and 87/100. (PhP 8,481,294.87)
2011	Eight Million Six Hundred Thirty-Six Thousand Three Hundred Twenty-Nine Pesos (PhP 8,636,329.00)"[100]

Petitioner's arguments:

Petitioner claims that RA 1125, as amended, vested this Court exclusive appellate jurisdiction to review by appeal respondent's decisions involving disputed refunds and such jurisdiction was expanded to include respondent's inaction on the same subject, brought about by RA No. 9282; that petitioner is a government instrumentality as defined in Section 2(10) of the Executive Order (EO) No. 292 and in light of the case of *Manila International Airport Authority vs. Court of Appeals, et al.*[101]; that a franchise tax could not be imposed on a non-franchisee; that petitioner cannot be a franchisee under the fundamental law of the land; that a franchise is not necessary for petitioner to operate as water utility; that Congress considered LWDs as private

[100] Summary of Stipulated Issues, JSFI, Docket (CTA Case No. 9138) – Vol. 1, pp. 420 to 421.
[101] G.R. No. 155650, July 20, 2006.

corporations when it enacted RA No. 7109; and that strict interpretation on tax exemption statutes should not apply to petitioner.

Respondent's counter-arguments:

Respondent counter-argues that petitioner is not entitled to refund on the ground that the amount paid pursuant to an application of compromise is not subject thereto.

This Court's Ruling

JURISDICTION

Before going into the merits of the cases, this Court will first discuss whether it has jurisdiction to take cognizance of the present Petition for Review.

In *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue,*[102] the Supreme Court decreed that "[u]nder Presidential Decree No. 242 (PD 242),[103] 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."

The pertinent sections of PD 242 are as follows:

> '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.

[102] G.R. No. 198146, August 8, 2017 ("*PSALM*").
[103] 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 9 July 1973).

> 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).' *(Emphasis supplied)*

The provisions of PD 242 have also been embodied in Chapter 14, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987, which took effect on 24 November 1989.[104]

The holding in the *PSALM* was justified on the grounds that: a) the President's constitutional power of control over all the executive departments, bureaus and offices under Section 17, Article VII of the Constitution must be upheld; b) under the doctrine of exhaustion of administrative remedies, relief under PD 242 must be pursued first prior to seeking judicial recourse, otherwise, the action would be premature and the case not ripe for judicial determination; and c) in harmonizing Section 4 of the NIRC of 1997 which

[104] *Dr. Pandi v. Court of Appeals*, 430 Phil. 239 (2002). Republic Act No. 6682 amended the effectivity clause of EO 292, directing that "[T]his Code shall take effect two years after its publication in the Official Gazette."

delineates the powers of the CIR with PD 242, the NIRC of 1997 is a general law while PD 242 is a special law and, hence, must prevail over the former.

The Supreme Court further discussed the rationale for vesting the Secretary of Justice with jurisdiction under PD 242, as follows:

> "The use of the word 'shall' in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word 'shall' means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims 'solely' between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.
>
> The law is clear and covers '***all disputes, claims and controversies solely*** **between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices** or **agencies arising from the interpretation and application of statutes, contracts or agreements.**' When the law says 'all disputes, claims and controversies solely' among government agencies, the law means ***all, without exception.*** Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.
>
> xxx xxx xxx
>
> 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.' *(Boldface and italics in the original)*

The foregoing discussion, notwithstanding, this Court holds that there is sufficient basis to conclude that the Supreme Court's ruling in *PSALM* shall

only be used as precedent in cases of **strictly similar** factual milieu and shall not be applied ***wholesale*** to ***all*** tax disputes solely involving government agencies.

A more circumspect reading of the *PSALM* ruling reveals that a distinctive factual element of the said case is the existence of a **Memorandum of Agreement (MOA)** executed by and among PSALM, the BIR, and the National Power Corporation (NPC) to govern the resolution of their dispute concerning the taxability of NPC/PSALM's transactions pursuant to privatization of NPC's assets as mandated by the Electric Power Industry Reform Act of 2001 (EPIRA Law). Pursuant to the said MOA, NPC and PSALM paid under protest the amount representing the basic value-added tax (VAT) assessment subject to the outcome of the final resolution of dispute by the appropriate court or body.

In consonance with the MOA, PSALM filed a petition for adjudication with the Department of Justice (DOJ) raising the issue of whether their sale of power plants should be subject to VAT. The DOJ ruled in favor of PSALM. It held that the sale of the power plants was not made in the regular conduct or pursuit of commercial activity but was merely effected to comply with the mandate of EPIRA Law. In short, the sale is not subject to VAT. Aggrieved, the CIR questioned the DOJ ruling before the Court of Appeals (CA) via a petition for *certiorari* claiming lack of jurisdiction on the DOJ's part. The CA agreed with the CIR and held that the DOJ petition was really a protest against assessment of deficiency VAT which is within the CIR's authority to resolve. The CA added that the CIR is the proper body to resolve cases involving disputed assessments, refund of internal revenue taxes, fees, and other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR. On appeal, the Supreme Court ruled otherwise and held that the DOJ has jurisdiction over the case.

Almost two years after *PSALM* or on July 3, 2019, the Supreme Court's Second Division promulgated the homonymous case of *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue.*[105] This later case involved substantially similar parties, subject-matter, facts and substantive issue as that of *PSALM*. In both cases, the BIR demands from PSALM the payment of deficiency VAT in connection with PSALM's disposition of NPC's power generation assets. While both cases were eventually decided by the Supreme Court, they differ in terms of procedural history. As mentioned above, the earlier *PSALM* ruling was initially lodged before the DOJ, then brought to CA *via* a petition for *certiorari*, and finally brought on appeal before the Supreme Court. On the other hand, in the 2019 PSALM case, an

[105] G.R. No. 226556, July 3, 2019 (the "2019 PSALM" case).

administrative protest was filed against the VAT assessment issued to it. The CIR denied the protest *via* a Final Decision on Disputed Assessment (FDDA) prompting PSALM to file a petition for review before this Court. After failing to seek relief from this Court, PSALM appealed before the Supreme Court which ultimately ruled in its favor and cancelled the VAT assessment.

Despite the similiarities of the parties, subject-matter, the facts, and the substantive issue involved in both cases, the Supreme Court did not apply its ruling on the *jurisdictional issue* of *PSALM* to the 2019 PSALM case although insofar as the *substantive issue* of the latter case is concerned, *i.e*, whether the sale of NPC's power generation assets is subject to VAT, the Supreme Court categorically applied *PSALM* as a precedent. The only factual difference between these two cases (aside from their difference in procedural history) is that in the earlier case, the parties have entered into a MOA to govern the resolution of their tax dispute. There is no MOA involved in the 2019 PSALM case. That the Supreme Court never applied its ruling on the *jurisdictional issue* of *PSALM* to the 2019 PSALM case serves to confirm the view that the presence of the MOA was *PSALM*'s distinctive factual element. *PSALM*'s unique procedural posture may be reasonably attributed to the MOA as the CIR's demand for the payment of deficiency VAT never actually ripened into a disputed assessment precisely because the parties have entered into a MOA even before the CIR could issue a final assessment notice. Veritably, it was the MOA which prompted the parties to resort to administrative adjudication before the DOJ for the resolution of their tax dispute as shown by paragraph (H) thereof which reads:

> "H) Any resolution in favor of NPC/PSALM by any appropriate court or body shall be immediately executory without necessity of notice or demand from NPC/PSALM. **A ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM. BIR undertakes to immediately process and approve the application, and release the tax refund/TCC within fifteen (15) working days from issuance of the DOJ ruling that is favorable to NPC/PSALM.**" *(Emphasis supplied)*

The existence of this distinctive factual element in *PSALM* strongly militates against the ***wholesale*** application of the case to ***all*** tax disputes involving government agencies.

It bears stressing that there are other cases decided by the Supreme Court subsequent to *PSALM* wherein it upheld the jurisdiction of this Court to rule on tax disputes purely involving government agencies.

The Supreme Court ruled in *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Commissioner of Internal Revenue et. al.*,[106] that PAGCOR, a government instrumentality, is only liable to pay the deficiency income tax, inclusive of increments, on its income derived from other related activities for taxable years 2005 and 2006 and also fringe benefits tax for same taxable years. It never questioned the CTA's assumption of jurisdiction over the case and, in fact, even remanded the case to this Court for the determination of the final amount to be paid by PAGCOR.

In *Bases Conversion and Development Authority v. Commissioner of Internal Revenue,*[107] the Supreme Court held that Bases Conversion and Development Authority (BCDA), a government instrumentality, is exempt from payment of legal or docket fees. Notably, the Supreme Court remanded the case to this Court for further proceedings regarding BCDA's claim for refund of creditable withholding tax.

Likewise in *Commissioner of Internal Revenue v. Bases Conversion and Development Authority,*[108] the Supreme Court ruled on the issue of whether BCDA is exempt from creditable withholding tax (CWT) on the sale of its Bonifacio Global City properties without questioning the CTA's exercise of jurisdiction over the controversy.

The factual peculiarities of *PSALM* compel us to limit its precedential application to cases of strictly similar factual milieu. At any rate, there are other legal complexities that firmly reject the wholesale application of *PSALM* to all tax-related disputes involving government entities and, more particularly, its application to refund cases such as the present consolidated Petitions for Review, as will be discussed below.

- **The *PSALM* Doctrine does not apply to the present case due to factual differences**

A study of both *PSALM* and the present case shows that due to their respective distinctive factual milieu, each has taken a different procedural path.

---

[106] G.R. Nos. 210689, 210704 and 210725, November 22, 2017.
[107] G.R. No. 205925, June 20, 2018.
[108] G.R. No. 217898, January 15, 2020.

The present consolidated petitions involve Davao City Water District, a government public water utility created pursuant to PD 198, and the CIR, as head of the BIR, a government office. Unlike in *PSALM*, the present cases involve judicial claims for refund of erroneously paid franchise tax for taxable years 2003, 2006, 2007, 2009, 2010 and 2011, respectively. Prior to filing its judicial claims before this Court, petitioner also filed administrative claims for refund before the BIR.

In all of these cases, the taxpayers involved pursued remedies made available to them by law, given their factual circumstances. In *PSALM*, there was no decision or inaction to speak of as the actions of the parties were governed by the MOA. Hence, PSALM could not have appealed to the CTA, even if it wanted to, as the CTA would have no jurisdiction over the same. That is not the situation involved in the present petitions as the petitioner sought legal redress granted to it by law, *i.e.*, Sections 204(C) and 229 of the 1997 NIRC in relation to Section 7(a)(2) of RA 1125, as amended by RA 9282.

- **Claims for refund fall under one of the exceptions to the doctrine of exhaustion of administrative remedies**

One of the justifications cited by Supreme Court for its ruling in *PSALM* was the doctrine of exhaustion of administrative remedies, *i.e.*, the administrative remedies provided under PD 242 must be sought first prior to seeking judicial recourse; otherwise, the action would be premature and the case will not be ripe for judicial determination. Citing the case of *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority*,[109] the Supreme Court held that the underlying rationale for requiring parties to seek administrative relief under PD 242 are: (1) to incur lesser expense for dispute resolution; (2) to achieve speedier resolution of controversies; and (3) to prevent clogging of court dockets.

It bears stressing that the doctrine of exhaustion of administrative remedies is not an iron-clad rule and, as such, admits certain well-recognized exceptions. In *Province of Zamboanga del Norte v. Court of Appeals*,[110] these exceptions were enumerated as follows: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal and amounts to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency

[109] G.R. No. 191427, May 30, 2011.
[110] G.R. No. 109853, October 11, 2000.

concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts, as an alter ego of the President, bears the implied and assumed approval of the latter; (7) when to require administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; **(11) when there are circumstances indicating the urgency of judicial intervention and unreasonable delay would greatly prejudice the complainant**; (12) when no administrative review is provided by law; (13) when the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

Given that the present petitions involve claims for refund of erroneously paid franchise tax, the exception under (11) is present here.

Claims for refund of erroneously paid or illegally collected internal revenue taxes are governed by Sections 204(C) and 229 of the 1997 NIRC. These provisions state as follows:

> "SEC. 204. ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** –
>
> The Commissioner may –
>
> x x x x x x x x x
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> x x x x x x x x x
>
> SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.***- No suit or proceeding shall be maintained in any

> court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

In a catena of cases,[111] the Supreme Court explicitly ruled that the prescriptive period for refund claims is mandatory and jurisdictional **regardless of any supervening cause that may arise after payment.** Both the administrative and judicial claims for refund must be filed within the two-year statutory period. But given the mandatory nature of such period, the claimant is allowed to file the judicial claim even without waiting for the resolution of the administrative claim to prevent the forfeiture of its claim through prescription.[112]

The mandatory nature of the two-year prescriptive period in judicial claims for refund manifestly calls for urgent judicial intervention. Under Sections 204(C) and 229 of the 1997 NIRC, the only administrative requirement that must be complied with prior to resorting to court action is the filing of a written claim for refund before the CIR. The written claim for refund only serves as a notice or warning to the CIR that court action will follow

---

[111] *Commissioner of Internal Revenue v. San Miguel Corporation*, G.R. Nos. 180740 & 180910, November 11, 2019; *Metropolitan Bank v. Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017; *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016; *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R.Nos. 193383-84, January 14, 2015; *Commissioner of Internal Revenue v. Manila Electric Co.*, G.R. No. 181459, June 9, 2014.

[112] *Id.*

unless tax or penalty alleged to have been collected erroneously or illegally is refunded.[113]

Forcing claimants to go through the procedure laid down under PD 242 before they could resort to court action runs counter to the underlying rationale of the doctrine of exhaustion of administrative remedies of achieving a more expeditious and less expensive mechanism for resolving claims for refund of internal revenue taxes. As mentioned above, the claimant in refund cases is allowed to file a judicial claim even without waiting for the resolution of the administrative claim to prevent the forfeiture of its refund claim through prescription. In assessment cases, the taxpayer has the option of elevating an appeal before this Court if its protest of the final assessment notice remains not acted upon by the CIR after 180 days from date of submission of complete documents in support thereof, within 30 days from the lapse of the 180-day period.[114] In stark contrast thereto, under the procedure laid down in PD 242 (or even under the Administrative Code of 1987), there is no fixed period within which the Secretary of Justice (or the Solicitor General) shall resolve the dispute. The contending parties have no other choice but to await their decision of the Secretary of Justice (or the Solicitor General) on their tax disputes. Until and unless a decision is finally rendered by these officials, the contending parties cannot seek relief from higher tribunals.

Applying the procedure under PD 242 (or the Administrative Code of 1987) to the tax-related disputes of government entities is actually a *mere redundancy* because complete administrative remedies for resolving deficiency assessments and claims for refund of internal revenue taxes, fees and other charges, as well as penalties imposed in relation thereto are already supplied by the 1997 NIRC. These remedies are found in Sections 204(C) and 229 (for refund cases) and Section 228 (for assessment cases) of the 1997 NIRC. The foregoing administrative remedies are provided for in recognition of and consistent with the CIR's power under Section 4 of the 1997 NIRC to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the Code and other laws administered by the BIR, subject to the exclusive appellate jurisdiction of the CTA. Therefore, to apply the *PSALM* doctrine *wholesale* to *all* tax-related cases involving government entities would not only effectively obliterate the quasi-judicial power of the CIR to rule on tax-related disputes, as far as government entities are concerned, but would also derogate on the *exclusive* appellate jurisdiction of the CTA over the CIR's decision or inaction.

---

[113] *P.J. Kiener Company, Ltd. v. David*, G.R. No. L-5163, April 22, 1953.
[114] *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 171251, March 5, 2012.

- **The wholesale application of *PSALM* doctrine curtails the jurisdiction of the CTA as well as fosters multiplicity of suits and split jurisdiction**

Construing *PSALM* as indiscriminately applicable to ***all*** tax disputes involving two government entities has the necessary consequence of curtailing the exclusive appellate jurisdiction of this Court over matters involving taxation.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[115] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[116] Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[117]

That being said, the Court of Tax Appeals is a court of special or limited jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. The jurisdiction of the CTA is conferred by RA No. 1125, as amended by RA No. 9282. The pertinent provision is quoted hereunder for ready reference:

> "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

---

[115] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, 749 SCRA 570.

[116] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014, 718 SCRA 533 citing *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3, 4 (1968).

[117] *Id.*, citing *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156, 169.

> 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;"

The Supreme Court, in *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.,*[118] remarked that the CTA is the **only entity** that may review CIR's ruling or inaction in tax refund cases.

In its *En Banc* Resolution in *Banco De Oro, et. al. v. Republic of the Philippines,*[119] the Supreme Court ruled that:

> "**Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies** (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) **on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.**
>
> **In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems.** Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals." *(Emphasis supplied and citations omitted)*

If the procedure laid down in PD 242 were to be followed to resolve *all* the disputes between government entities on tax-related matters, there will never be any instance wherein these cases will be brought before the CTA for review as the judicial appeal, if the facts warrant, would have to be lodged before the CA *via* Rule 43 petition. This is problematic as it is undeniable that matters calling for technical knowledge should be handled by the body or tribunal with specialization over the controversy.[120] Not only that. Requiring ***all*** disputes between government entities on tax-related matters to be lodged before the Secretary of Justice (or the Solicitor General) will not only be at variance with the Supreme Court *En Banc*'s pronouncement in *Banco De Oro* (that the law intends the CTA to have exclusive jurisdiction to resolve ***all*** tax

---

[118] G.R. No. 231581, April 10, 2019.
[119] G.R. No. 198756, August 16, 2016.
[120] *The Philippine American Life and General Insurance Company v. The Secretary of Finance and Commissioner of Internal Revenue*, G.R. No. 210987, November 24, 2014.

problems) but will also encourage multiplicity of suits and split jurisdiction. This is best illustrated in disputed assessment cases where, in some instances, there is a need to suspend collection of the assessed deficiency internal revenue taxes. Note that decisions or rulings of the CIR assessing any tax, or levying, distraining, or selling any property of the taxpayer in satisfaction of its tax liabilities are immediately executory and are not suspended by any appeal thereof.[121] And under Section 218 of the 1997 NIRC, "[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge." By way of exception, Section 11 of RA 1125, as amended, gives the CTA the authority to suspend collection of internal revenue taxes, fees or other charges when, *in its opinion*, such collection may jeopardize the interest of the Government and/or the taxpayer. Only the CTA which has the authority to order the suspension of collection internal revenue taxes in disputed assessment cases. Unmistakably, there will be split jurisdiction and multiplicity of suits if government entities are mandated to seek resolution of their tax disputes before the Secretary of Justice (or the Solicitor General) while the incidental matter of suspending the collection of taxes would have to be secured from another tribunal, *i.e.*, the CTA. This kind of arrangement is certainly anathema to an orderly administration of justice.

Incidentally, there was no need to suspend the collection of the assessed deficiency VAT in *PSALM* simply because PSALM already paid under protest the basic VAT assessed in due compliance with the terms of the MOA, even before the filing of the petition for adjudication before the DOJ.

- **Special law prevails over general law; Later law prevails over earlier law**

The *PSALM* case discusses PD 242 vis-a-vis Section 4 of the 1997 NIRC in order to decide upon the issue of whether or not the Secretary of Justice has jurisdiction in a case involving solely government entities. In its discussion, the Supreme Court came to the conclusion that the 1997 NIRC is a general law dealing with matters involving taxation and PD 242, a special law, governing adjudication of controversies and disputes between government entities. Being a special law, its provisions are paramount to the provisions of the 1997 NIRC, and hence, must be followed.

However, in ascertaining whether or not this Court has jurisdiction in this particular case, what ought to be weighed against PD 242 is not the 1997 NIRC, but RA 9282 which amended RA 1125. RA 9282, expanded the

---

[121] *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*, G.R. No. 219340, November 7, 2018.

jurisdiction of the CTA and elevated its rank to the level of a collegiate court with special jurisdiction.

The difference between a special law and a general law was also discussed in *PSALM*, citing *Vinzons-Chato v. Fortune Tobacco Corporation*,[122] thus:

> "A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only.
>
> A general law and a special law on the same subject are statutes in pari materia and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.
>
> The circumstance that the special law is passed before or after the general act does not change the principle. Where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed expressly or by necessary implication."

Using the above standards, it is apparent that PD 242 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 GOCCs while RA 9282 is a specific law vesting exclusive appellate jurisdiction on the CTA in cases pertaining to disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the 1997 NIRC.

Furthermore, in the construction of these two statutes, it is of utmost importance to note the following. PD 242 was issued on July 9, 1973. The

---

[122] G.R. No. 141309, June 19, 2007.

Administrative Code of 1987 which embodies the provisions of PD 242 took effect on November 24, 1989. On the other hand, RA 9282 which expanded the jurisdiction of the CTA and elevated its rank to the level of a collegiate court with special jurisdiction took effect on April 23, 2004. Once again, using the standards laid down in the *Vinzons-Chato* case, RA 9282, the special law that was passed later, must be regarded as an exception to or qualification of PD 242, the prior general law.

In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle, embodied in the maxim, *"ut res magis valeat quam pereat"*, that the courts should, if reasonably possible to do so without violence to the spirit and language of an act, so interpret the statute to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory.

Every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimum interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws.

It is to be noted that RA 9282, the special law that was passed later, had a repealing clause in Section 17 thereof which states:

> "Section 17. *Repealing Clause.* — All laws, executive orders, executive issuances or letter of instructions, or any part thereof, inconsistent with or contrary to the provisions of this Act are hereby deemed repealed, amended or modified accordingly."

The questions at this juncture are whether or not Sec. 7(a)(2) of RA 9282 can be harmonized with PD 242/Administrative Code of 1987 and to what extent, if any, should both prior laws be repealed, amended or modified, as the case may be.

On the one hand, Sec. 7 of RA 9282 gives the CTA exclusive appellate jurisdiction over decisions or inaction of the CIR and other parties mentioned in the section regardless of who the parties are as long as they are taxpayers.

On the other hand, PD 242/Administrative Code of 1987 gives either the Solicitor General, the Government Corporate Counsel or the Secretary of Justice, as the case may be, jurisdiction over the administrative review of controversies between or among government offices, agencies and instrumentalities, including GOCCs regardless of what the subject matter of the controversy is.

It has been said that if two or more laws on the same subject cannot possibly be reconciled or harmonized, one has to give way in favor of the other. There cannot be two conflicting laws on the same subject. Either the two laws are reconciled and harmonized or, if they cannot, the earlier one must yield to the later one, it being the later expression of legislative will.

Assuming that the laws under discussion are all impossible to reconcile, then it would seem that PD 242 and the Administrative Code of 1987 have been repealed by RA 9282, considering that not only is it the later enactment, having taken effect on April 23, 2004, but it is also a special law that must prevail over the general one.

However, this Court need not go to that extent as the laws under discussion may be reconciled. Taking our cue from RA 9282, the later enactment, appears to have modified PD 242 and the Administrative Code of 1987 to the extent that when the controversy between or among government offices, agencies and instrumentalities, including GOCCs involve any of the matters listed in Section 7(a) thereof, then the CTA has exclusive appellate jurisdiction. All other controversies between or among the aforementioned parties that do not involve taxation matters or interpretation of the provisions of the 1997 NIRC may properly follow the procedure for administrative settlement or adjudication of disputes laid down in PD 242 and the Administrative Code of 1987.

Considering the foregoing discussion, this Court holds that it has jurisdiction over this case.

TIMELINESS OF THE PETITION

Under Sections 204(C) and 229 of the 1997 NIRC, a claim for refund must be first filed before the CIR prior to the filing of a judicial claim before the CTA. Both the administrative and judicial claims for refund must be filed within two (2) years from the date of payment of the tax.

In the present consolidated cases, the franchise taxes to be refunded were paid on the following dates:

Dates of Payment	Amounts	Taxable Years
February 27, 2014	₱4,682,408.28	2003
December 9, 2013	₱3,658,126.69	2006
September 26, 2013	₱6,988,083.88	2007
February 27, 2014	₱7,940,076.52	2009
February 27, 2014	₱8,481,294.87	2010
December 9, 2013	₱8,636,329.00	2011

The administrative claims for refund were filed on February 11, 2015 while the Petitions for Review covering these claims were filed before this Court on September 8, 2015. Considering that both the administrative and judicial claims were made within two (2) years counted from the earliest payment date, *i.e.*, September 26, 2013, the Petitions for Review were timely filed.

PETITIONER IS NOT ENTITLED TO THE REFUND

Petitioner's entitlement to its claims for refund is hinged on the question of whether it is subject to the payment of franchise tax under Section 119 of the 1997 NIRC.

In support of its contention that it is not subject to the imposition of franchise tax under the 1997 NIRC, petitioner claims that it is not a franchise grantee within the ambit of the Constitution.[123] In addition, petitioner likewise advances the following arguments:

a. A franchise is not necessary for its operation as a water utility;[124]

b. Petitioner is a part of the government machinery, and as such, is not subject to franchise tax;[125]

c. Congress considered local water districts as private corporations when it enacted RA 7109 and the said law did not withdraw the tax

[123] CTA Case No. 9138 Docket, Vol. I, p. 29.
[124] *Id.*
[125] *Id.*

exemption of local water districts which are government-owned or controlled corporations;[126] and

d. Strict interpretation of statutes on tax exemption should not apply to petitioner which is considered a government agency.[127]

Respondent, on the other hand, maintains that petitioner is a franchise grantee and, therefore, liable to pay franchise tax.[128] Furthermore, respondent asserts that RA 7109 limited the tax exemption privileges of local water districts.[129] Respondent also contends that in a claim for refund, the burden of proof is on the taxpayer to establish its right to refund.[130] Failure to sustain the burden is fatal to its claim.[131]

The imposition of franchise tax on the petitioner finds its legal mooring in Section 119 of the 1997 NIRC which states:

> **"Section 119.** *Tax on Franchises.* – **Any provision of general or special law to the contrary notwithstanding,** there shall be levied, assessed and collected in respect to **all franchises on** radio and/or television broadcasting companies whose *annual* gross receipts of the preceding year does not exceed Ten million pesos (P10,000.00), subject to Section 236 of this Code, a tax of three percent (3%) and on electric, gas and **water utilities,** a tax of two percent (2%) on the **gross receipts derived from the business covered by the law granting the franchise**: *Provided, however,* That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon: *Provided, further,* That once the option is exercised, it shall not be revoked.
>
> The grantee shall file the return with, and pay the tax due thereon to the Commissioner or his duly authorized representative, in accordance with the provisions of Section 128 of this Code, and the return shall be subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding." *(Emphasis and underscoring supplied)*

---

[126] *Id.*
[127] *Id.*
[128] *Id.*, pp. 73-77.
[129] *Id.*, pp. 78-82.
[130] *Id.*, pp. 82-86.
[131] *Id.*

A textual analysis of the foregoing provision shows that the *tax* is imposed on the *franchise* of business entities specifically mentioned in the law which include *water utilities.*

In the interpretation of tax laws, a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously.[132] A tax cannot be imposed without clear and express words for that purpose.[133] In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import.[134] As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.[135]

To determine whether petitioner is covered by Section 119 of the 1997 NIRC, it is crucial to inquire whether petitioner holds a *franchise* or not. That being so, we need to clarify first the nature and definition of a franchise within the context of taxation. On this point, the following discussion in *National Power Corporation v. City of Cabanatuan*[136] is illuminating:

> "In its general signification, a **franchise** is a **privilege conferred by government authority, which does not belong to citizens of the country generally as a matter of common right.** In its specific sense, **a franchise may refer to a general or primary franchise, or to a special or secondary franchise.** The former relates to the right to exist as a corporation, by virtue of duly approved articles of incorporation, or a charter pursuant to a special law creating the corporation. The right under a primary or general franchise is vested in the individuals who compose the corporation and not in the corporation itself. **On the other hand, the latter refers to the right or privileges conferred upon an existing corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires.** The rights under a secondary or special franchise are vested in the corporation and may ordinarily be conveyed or mortgaged under a

---

[132] *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue,* G.R. No. 117359, July 23, 1998 (En Banc); *Commissioner of Internal Revenue v. The Court of Appeals, et. al.*, G.R. No. 115349, April 18, 1997.

[133] *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, G.R. Nos. 167274, July 21, 2008.

[134] *Commissioner of Internal Revenue v. The Court of Appeals, et. al.,* G.R. No. 107135, February 23, 1999; *Commissioner of Internal Revenue v. San Miguel Corporation*, G.R. No. 184428, November 23, 2011.

[135] *Commissioner of Internal Revenue v. The Philippine American Accident Insurance Company, Inc.*, G.R. No. 141658, March 18, 2005.

[136] G.R. No. 149110, April 9, 2003 ("*City of Cabanatuan*").

> general power granted to a corporation to dispose of its property, **except such special or secondary franchises as are charged with a public use.**"
>
> x x x x x x x x x
>
> As commonly used, a franchise tax is "**a tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state.**" It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but **on its exercise of the rights or privileges granted to it by the government**. Hence, a corporation need not pay franchise tax from the time it ceased to do business and exercise its franchise.
>
> x x x x x x x x x
>
> **[A] franchise tax is imposed based** not on the ownership but **on the exercise by the corporation of a privilege to do business.** The taxable entity is the corporation which exercises the franchise, and not the individual stockholders." *(Emphasis and underscoring supplied; citations omitted)*

Guided by the foregoing discussion, this Court holds that the term *franchise* as contemplated by Section 119 of the 1997 NIRC refers to a *special or secondary* franchise, *i.e.*, the right or privilege granted to a corporation to engage in certain activities. Under Section 119, this particularly pertains to the right or privilege to engage in the business of radio or television broadcasting, and also on business undertakings classified as electric, gas, or *water* utilities.

It must be emphasized that the definition of *franchise tax* furnished by the Supreme Court in the *City of Cabanatuan* case jibes with the text of Section 119 of 1997 NIRC. The said provision explicitly states that the franchise tax shall be computed based on the gross receipts derived by the franchisee from its business covered by the law granting the franchise.

With respect to franchise grantees engaged in radio and/or television broadcasting, Section 119 also provides that the franchise tax therein shall not apply when the annual gross receipts of these companies for the preceding year *exceeds* ten million pesos (₱10,000,000.00).

Therefore, to be liable for franchise tax under Section 119, it is required that: (1) the taxpayer holds a franchise to engage in business activities specified

under the law, *i.e.*, radio and/or television broadcasting, electric, gas, and water utilities; (2) the taxpayer engages in the business covered by the law granting its franchise; and (3) for franchise grantees engaged in radio and/or television broadcasting, that their annual gross receipts for the preceding year *does not exceed* ₱10,000,000.00.

The petitioner fulfills all of these requisites.

First, the petitioner holds a franchise to operate as a water utility. PD 198, as amended, serves both as petitioner's *general or primary* franchise and *special or secondary* franchise. In a number of cases,[137] the Supreme Court already confirmed that local water districts derive their legal existence from PD 198, as amended. In this regard, the said law serves as local water districts' general or primary franchise. As a special or secondary franchise, PD 198, as amended, grants local water districts *special* powers, rights and/or privileges in addition to, or aside from, the rights, powers, or privileges conferred to private corporations under existing law. These special rights or powers granted to local water districts by PD 198, as amended, include: (1) the power of eminent domain [Sec. 25]; (2) the power to construct or acquire of waterworks [Sec. 26]; (3) the power to sell water to any persons within the district [Sec. 27]; (4) the power to construct and operate facilities for the collection, treatment, and disposal of sewerage [Sec. 28]; and (5) right of way to construct and maintain waterworks on lands belonging to the Philippine Government, or any of its political subdivisions, and/or instrumentalities [Sec. 29].

The case of local water districts deriving both their primary and secondary franchises from a single statute is similar to the case of the National Power Corporation in *City of Cabanatuan.* As a government-owned or controlled corporation (GOCC) with special charter (much like the local water districts), the National Power Corporation also derived both its primary and secondary franchise from its charter, *i.e.*, Commonwealth Act No. 120, as amended. As explained by the Supreme Court:

> "Petitioner fulfills the first requisite. **Commonwealth Act No. 120, as amended by Rep. Act No. 7395, constitutes petitioner's primary and secondary franchises.** It serves as the petitioner's charter, defining its composition, capitalization, the appointment and the specific duties of its corporate officers, and its corporate life span. As its secondary franchise, Commonwealth Act

[137] *Feliciano v. Commission on Audit*, G.R. No. 147402, January 14, 2004 (En Banc); *De Jesus v. Commission on Audit*, G.R. No. 149154, June 10, 2003 (En Banc); *Davao City Water District et. al. v. Civil Service Commission*, G.R. Nos. 95237-38, September 13, 1991 (En Banc); *Hagonoy Water District v. National Labor Relations Commission,* G.R. No. 81490, August 31, 1988; *Baguio Water District v. Trajano, et. al.*, G.R. No. L-65428, February 20, 1984.

> No. 120, as amended, vests the petitioner the following powers which are not available to ordinary corporations, *viz*: x x x"

It is also worth mentioning that in the case of *Metropolitan Cebu Water District v. Adala*[138] and as reiterated in *Tawang Multi-purpose Cooperative v. La Trinidad Water District*,[139] the Supreme Court declared as unconstitutional Section 47 of PD 198, as amended. The sole basis for the declaration of unconstitutionality is the Constitutional prohibition against the grant, whether directly or indirectly, of a franchise for the operation of a public utility that is *exclusive* in character. For purposes of our discussion, what is remarkable in the *Metropolitan Cebu* and *Tawang* cases is not the finding that Section 47 suffers from constitutional infirmity for bestowing exclusivity to the franchise granted by law to local water districts. It is actually the implied recognition that what PD 198, as amended, grants to local water districts is not only the right to exist as corporate entities *per se* (primary franchise) but also the right to operate as public utilities (secondary franchise).

Second, there is no doubt that petitioner is actually operating within the territorial jurisdiction of the City of Davao as a water utility company. From its business operations for the year 2003, petitioner generated gross sales amounting to ₱585,301,035.00.[140]

Third, since the petitioner is not a franchise grantee engaged in radio and/or television broadcasting, the annual gross receipts threshold requirement of 10 million pesos under Section 119 does not apply.

Given that all of the requisites are present, petitioner is considered a *franchise holder* within the contemplation of Section 119 of the 1997 NIRC and, correspondingly, subject to franchise tax imposed thereto.

As a corollary to the finding that the petitioner holds a franchise and, as such, is covered by Section 119 of the 1997 NIRC, this Court also finds as untenable petitioner's contention that a franchise is not necessary for its operation as a water utility. Local water districts are considered "public utilities"[141] as confirmed by the Supreme Court in the above-cited *Metropolitan*

---

[138] G.R. No. 168914, July 4, 2007 (En Banc) ("*Metropolitan Cebu*").
[139] G.R. No. 166471, March 22, 2011 (En Banc) ("*Tawang*").
[140] CTA Case No. 9138 Docket, Vol. I, p. 34.
[141] Citing the earlier case of *National Power Corporation v. Court of Appeals* (G.R. No. 112702, September 26, 1997; 279 SCRA 506, 523), the Supreme Court *En Banc* defined "public utility" as a business or service engaged in regularly **supplying** the public with some commodity or service of public consequence such as electricity, gas, **water**, transportation, telephone or telegraph service. *(Emphasis and underscoring in the original)*

Cebu case. Being public utilities, they unquestionably require franchise for their operation as mandated by Section 11, Article XII of the Constitution.[142]

Tax exemption, being an act of legislative grace, will not be considered conferred unless the terms of the statute under which it is granted clearly and distinctly show that such was the legislative intention.[143] In other words, the rule is that tax exemption is strictly construed against the taxpayer claiming the same.[144] And since taxation is the rule and exemption therefrom the exception, the exemption may thus be withdrawn at the pleasure of the taxing authority.[145]

That is what happened in the present consolidated cases.

Petitioner's sole refuge for claiming franchise tax exemption is Section 46 of PD 198, as amended,[146] which states:

> SEC. 46. *Exemption from Taxes.* - **A district** shall (1) be exempt from paying income taxes, and (2) **shall be exempt from the payment of (a) all National Government, local government and municipal taxes and fees, including <u>any franchise</u>**, filing, recordation, license or permit fees or taxes and any fees, charges or costs involved in any court of administrative proceeding in which it may be a party and (b) all duties or imposts on imported machinery, equipment and materials required for its operations. *(Emphasis and underscoring supplied)*

Upon the enactment of RA 7109 on August 14, 1991, the franchise tax exemption privilege previously enjoyed by local water districts was limited to five (5) years counted from the effectivity of the said law. For proper reference, the relevant provisions of RA 7109 are quoted below:

> "SEC. 1. *Exemption from taxes.* – **A water district created pursuant to Presidential Decree No. 198, as amended, shall be exempted from the payment of** (1) income taxes, except taxes on interest income from deposits and on investments that have no direct relation with water service operations; (2) **franchise taxes**; and (3) duties and taxes on imported machinery, equipment and

---

[142] *Tatad v. Garcia*, G.R. No. 114222, April 6, 1995.
[143] *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. L-19707, August 17, 1967
[144] *Smart Communications, Inc. v. City of Davao*, G.R. No. 155491, September 16, 2008 citing *Commissioner of Internal Revenue v. Visayan Electric Company*, 132 Phil. 203, 215 (1968).
[145] *Mactan Cebu International Airport Authority v. Marcos*, G.R. No. 120082, September 11, 1996.
[146] Re-numbered from Section 45 to Section 46 under Sec. 20, PD 768.

> materials required for its operations: provided, that such machinery, equipment and materials are not domestically manufactured at comparable and competitive prices and quality.
>
> x x x x x x x x x
>
> SEC. 3. *Period and Conditions of Exemptions.* – **The tax exemption privileges provided for in Sections 1 and 2 to all water districts shall be enjoyed only for a period of five (5) years from the effectivity of this Act**: *provided*, that the water districts shall adopt internal control reforms that would bring about their economic and financial viability: *provided, further,* that, for a water district to be entitled to the tax exemption, its appropriation for personal services, as well as for travel, transportation or representation expenses and purchase of motor vehicles, shall not be increased by more than twenty-five percent (25%) a year during the period of exemption."

RA 7109 took effect on August 14, 1991 upon approval thereof by the President on even date.[147] Counting five (5) years from said date, local water districts' enjoyment of franchise tax exemption lasted until August 14, 1996. From August 15, 1996 and thereafter, local water districts such as petitioner already became subject to the payment of franchise tax.

There is likewise no merit to petitioner's position that Congress considered local water districts as private corporations when it enacted RA 7109 and that the said law did not withdraw the tax exemption of local water districts which are government-owned or controlled corporations with special charter. On this matter, it is enough to point out that Section 1 of RA 7109 patently states that **"[a] water district created pursuant to Presidential Decree No. 198, as amended, shall be exempted from the payment of... franchise taxes..."** among other types of taxes enumerated in that statute.

The law is clear. There is no room for interpretation.

As the Supreme Court emphatically proclaimed in *H. Villarica Pawnshop, Inc. et. al. v. Social Security Commission et. al.*,[148] to wit:

> **"It is the duty of the Court to apply the law the way it is worded. Basic is the rule of statutory construction that when the law is clear and unambiguous, the court is left with no**

[147] Sec. 8, RA 7109.
[148] G.R. No. 228087, January 24, 2018.

> **alternative but to apply the same according to its clear language. The courts can only pronounce what the law is and what the rights of the parties thereunder are.** Fidelity to such a task precludes construction or interpretation, unless application is impossible or inadequate without it. Thus, it is only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.
>
> **Parenthetically, the 'plain meaning rule' or *verba legis* in statutory construction enjoins that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation.** This rule of interpretation is in deference to the plenary power of Congress to make, alter and repeal laws as this power is an embodiment of the People's sovereign will. **Accordingly, when the words of a statute are clear and unambiguous, courts cannot deviate from the text of the law and resort to interpretation lest they end up betraying their solemn duty to uphold the law and worse, violating the constitutional principle of separation of powers.**" *(Emphasis supplied and citations omitted)*

In solemn adherence to the foregoing, this Court rules that RA 7109 clearly refers to the local water districts created under PD 198, as amended, as the entities whose tax exemption privileges were limited to the five-year period mentioned in RA 7109. This Court need not concern itself with whatever legal character or status the Congress might have attributed to the local water districts at the time when RA 7109 was created. The only task here is to apply the law as it is plainly written.

With respect to the petitioner's remaining kindred contentions that: (1) as a part of the government machinery it is not subject to franchise tax; and (2) that being part of the government machinery, the rule on strict construction of tax exemption against the taxpayer shall not be applied to it, suffice it to state that petitioner's legal status as a government-owned or controlled corporation with original charter[149] *per se* does not and cannot place it beyond the reach of the taxing powers of Congress. Nothing can prevent Congress from decreeing that even instrumentalities or agencies of the government performing governmental functions may be subject to tax, as appropriately noted by the Supreme Court in *Mactan Cebu International Airport Authority v. Marcos.*[150]

---

[149] *Davao City Water District et. al. v. Civil Service Commission*, G.R. Nos. 95237-38, September 13, 1991 (En Banc).
[150] G.R. No. 120082, September 11, 1996.

True enough, while local water districts were originally given exemption from various types of taxes by their enabling charter, the Congress, in its unquestionable wisdom, had decided to eventually withdraw such tax exemptions when it enacted RA 7109 in 1991. And as far as the imposition of franchise tax is concerned, Section 119 of the NIRC evidently provides that the same shall be made **"[a]ny provision of general or special law to the contrary notwithstanding."** This shall, once and for all, settle any lingering doubts as to whether local water districts are subject to franchise tax.

Taking into account all of the foregoing disquisitions, it is apparent that petitioner's franchise tax payments were **not** erroneously or illegally collected. For failure of the petitioner to establish its right to refund, the present consolidated Petitions for Review cannot be granted.

WHEREFORE, premises considered, the present consolidated Petitions for Review docketed as CTA Case Nos. 9138, 9139, 9140, 9141, 9142 and 9143, respectively, are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

With due respect, I vote to DISMISS the Petitions for Review for lack of jurisdiction. Please see attached Dissenting Opinion.
ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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

THIRD DIVISION

****

DAVAO WATER DISTRICT, Petitioner,	**CTA Case Nos. 9138, 9139, 9140, 9141, 9142, and 9143**
- versus -	**Members:** **UY,** *Chairperson*, **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated*:** MAY 06 2022 2:07 p.m.

x - x

DISSENTING OPINION

UY, *J.*:

With all due respect, I disagree with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Ma. Belen M. Ringpis-Liban in denying the above-captioned Petition for Review, for lack of merit, and finding that this Court has jurisdiction over the instant Petition for Review.

It is my humble position that this Court should **DISMISS** the case for lack of jurisdiction.

In cases where there are disputes, claims and controversies *solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including GOCCs, reference is made to Sections 66, 67, and 68 of Chapter 14, Book IV of Executive Order (E.O.) No. 292, otherwise known as the Administrative Code of 1987, for the settlement thereof, to wit:

"**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.

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)." *(Emphases supplied)*

Based on the foregoing, disputes or claims ***solely*** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including GOCCs, are to be administratively settled or adjudicated. In cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice (SOJ). On the other hand, cases involving mixed questions of law and of fact, or purely factual issues shall be submitted to the Solicitor General if the latter is the principal law officer or general counsel of the parties, otherwise, the issues shall be submitted to and resolved by the SOJ.

In the case of ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue (PSALM case)***,[1] the Supreme Court *En Banc* explained the foregoing provisions, as well as its predecessor, P.D. No. 242, which were substantially the same, as follows:

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

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

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. . .**

xxx xxx xxx

x x x **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

xxx xxx xxx

The second paragraph of Section 4 of the 1997 NIRC, x x x is in conflict with PD 242. x x x

To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards ***private entities and the BIR***, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) **Where the disputing parties are *all* public entities (covers disputes between the BIR and other government entities), the case shall be governed by PD 242.**

xxx xxx xxx

Thus, even if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to intra-governmental disputes. PD 242 is a special law while the 1997 NIRC is a general law, insofar as disputes solely between or among government agencies are concerned.

> x x x PD 242 is a valid law prescribing the procedure for administrative settlement or adjudication of disputes among government offices, agencies, and instrumentalities under the executive control and supervision of the President.
>
> xxx xxx xxx
>
> **PD 242 is now embodied in Chapter 14, Book IV of Executive Order No. 292 (EO 292), otherwise known as the Administrative Code of 1987**, which took effect on 24 November 1989. . ." *(Emphasis supplied.)*

The foregoing jurisprudential pronouncements are definite, that in cases where the disputing parties are ***all*** public entities, the case shall be governed by PD No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987). Accordingly, the dispute or claim shall be administratively settled or adjudicated in the manner provided therein, *i.e.,* the matter shall be brought either before the Secretary of Justice or the Solicitor General, as the case may be.

At this juncture, it is stressed that the aforecited case, decided by the Supreme Court, sitting *En Banc,* was categorical in ruling that, when the law says *'all disputes, claims and controversies solely'* among government agencies, **the law means all, without exception**. It was, however, emphasized that PD No. 242 will only apply when all the parties involved are *purely* government offices and/or GOCCs.

Moreover, the conflicting provisions of NIRC of 1997 and PD No. 242 were noted and harmonized by the Supreme Court *En Banc.* To be specific, PD No. 242 provides that all disputes and claims solely between government agencies and offices, including GOCCs are within the jurisdiction of the SOJ, the Solicitor General, or the Government Corporate Counsel, as the case may be. On the other hand, Section 4 of the NIRC of 1997, as amended, provides that the CTA has exclusive appellate jurisdiction as regards the petitioner's decision on matters involving disputed assessments, refunds in internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under NIRC.

For the guidance of the bench and bar, the Supreme Court *En Banc* dispelled any confusion and adopted the following interpretation in cases involving disputed assessments, refunds of internal revenue

taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, to wit:

1. As regards ***private entities and the BIR***, the decision of petitioner is subject to the exclusive appellate jurisdiction of this Court, in accordance with Section 4 of the NIRC; and

2. Where the ***disputing parties are all public entities***, the case shall be governed by PD No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987), where the dispute 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.

In fact, the foregoing summation of rules was subsequently affirmed and applied in the case of ***Commissioner of Internal Revenue vs. The Secretary of Justice and Metropolitan Cebu Water District (MCWD)***,[2] where the Supreme Court likewise upheld the jurisdiction of the SOJ over the tax dispute between the BIR and Metropolitan Cebu Water District, *a local water district*, pursuant to PD No. 198, also known as the Provincial Water Utilities Act of 1973.

Accordingly, unless and until the foregoing interpretation is modified by the Supreme Court, sitting *En Banc*, this Court is mandated to apply the same, as judicial decisions applying or interpreting the laws or the Constitution shall form a part of the law of the land.[3]

In this case, it is undisputed that **both** of the parties involved are **public entities**, as the dispute is between the Davao Water District and the Bureau of Internal Revenue, both of which are government entities.

Considering that both parties are public entities under the Executive Branch of the government, the instant case should be governed by PD 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987) and not by the NIRC of 1997, as amended, considering that the disputing parties are both government entities. Accordingly, jurisdiction over the case vests with the SOJ, and not with this Court.

---

[2] G.R. No. 209289, July 9, 2018.
[3] *See* Article 8, Civil Code of the Philippines.

As for the cited cases, namely: 1) 2019 case of ***Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue,***[4] 2) ***Philippine Amusement and Gaming Corporation (PAGCOR) vs. Commissioner of Internal Revenue,***[5] 3) ***Bases Conversion and Development Authority vs. Commissioner of Internal Revenue,***[6] and 4) ***Commissioner of Internal Revenue vs. Bases Conversion and Development Authority,***[7] it is true that in the said cases, the CTA was not divested of its jurisdiction. It is, however, noted that the issue of jurisdiction was *not* raised as an issue by the parties and the Supreme Court *never passed upon the said issue.* It is settled that any issue, whether raised or not by the parties, *but not passed upon by the (Supreme) Court*, does not have any value as precedent.[8] Hence, the aforecited cases fail to persuade.

It bears stressing that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[9] Considering that the instant Petition for Review involves two government entities, the same should be dismissed for lack of jurisdiction.

In light of the foregoing considerations, I vote to **DISMISS** the Petition for Review in CTA Case Nos. 9138, 9139, 9140, 9141, 9142, and 9143, for lack of jurisdiction.

ERLINDA P. UY
Associate Justice

---

[4] G.R. No. 226556, July 3, 2019.
[5] G.R. No. 210689, 210704, and 210725, November 22, 2017.
[6] G.R. No. 205925, June 20, 2018.
[7] G.R. No. 217898, January 15, 2020.
[8] *Commissioner of Internal Revenue vs. San Roque Power Corporation/Taganito Mining Corporation vs. Commissioner of Internal Revenue/Philex Mining Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 187485, 196113, 197156, February 12, 2013.
[9] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.