

## FIRST DIVISION

[ G.R. No. 209289, July 09, 2018 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. THE  
SECRETARY OF JUSTICE AND METROPOLITAN CEBU WATER  
DISTRICT (MCWD), RESPONDENTS.**

### DECISION

**TIJAM, J.:**

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

#### The Antecedent Facts

Metropolitan Cebu Water District (respondent) received a Preliminary Assessment Notice from the Bureau of Internal Revenue (BIR) for alleged . tax deficiencies for the year 2000 in the total amount of P70,660,389.00, representing alleged deficiency income, franchise and value added taxes with surcharge and interest, as well as compromise penalties.<sup>[4]</sup>

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

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

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

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

No cost.

SO ORDERED.<sup>[8]</sup>

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

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

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

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

### **Ruling of the Court**

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

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

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

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

Here, respondent filed a protest with the CIR to assail the tax assessment issued to respondent. For failure of the CIR to act within 180 days from submission of the supporting documents, respondent filed a petition for review before the CTA. Interestingly, the CIR filed a motion to dismiss the petition for review on the ground that the CTA has no jurisdiction to resolve the said matter since the SOJ has exclusive jurisdiction over all disputes between the government and GOCCs pursuant to Section 66<sup>[12]</sup> and 67,<sup>[13]</sup> Chapter 14, Book IV of the Administrative Code of 1987. As a result, the CTA dismissed the petition. When the SOJ assumed jurisdiction over the petition for arbitration filed by the respondent, the CIR, completely changed its stand and claimed that the SOJ has no jurisdiction over the case.

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

acquired jurisdiction over the dispute between the CIR and the respondent, continues to exercise the same until the termination of the case.

Nevertheless, the SOJ's jurisdiction over tax disputes between the government and government-owned and controlled corporations has been finally settled by this Court in the recent case of *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*,<sup>[17]</sup> to wit:

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

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

However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, which are both wholly government owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants. There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. Sections 1, 2, and 3 of PD 242 read:

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

Section 2. **In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice,** as Attorney

General and ex officio adviser of all government owned or controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. **His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.**

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

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

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

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

The purpose of PD 242 is to provide for **a speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts.**