

EN BANC

G.R. No. 198146 (*Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*)

Promulgated:

August 8, 2017

X-----Jeffrey T. Velasco-----X

CONCURRING OPINION

VELASCO, JR., J.:

I concur in the ruling of the *ponencia*, but would like to underscore the procedural considerations underlying my concurrence. Specifically, the focal point of this elucidation is on how parties similarly situated to the ones herein are to proceed had the Court not opted to resolve the petition on the merits.


Having ruled that the DOJ properly exercised jurisdiction over the controversy pursuant to Presidential Decree No. (PD) 242 and Executive Order No. (EO) 292, it behooves the Court to require similarly situated agencies adversely affected by latter rulings of the DOJ in intra-governmental disputes to observe the procedural steps for appeal as prescribed by the very same statutes that conferred jurisdiction to it.

Moving forward, it is as Senior Associate Justice Antonio T. Carpio (Justice Carpio) proffered – rulings of the Secretary of Justice (SOJ) in the exercise of his jurisdiction over controversies solely involving government agencies ought to be appealed to the Office of the President. As per Section 70, Chapter 14, Title I, Book IV of EO 292:

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

The authority of the President to review the ruling of the DOJ is part and parcel of his extensive power of control over the executive department and its officers, from Cabinet Secretary to the lowliest clerk,¹ that is preserved in Article VII, Section 17 of the Philippine Constitution, to wit:

¹ *Carpio v. Executive Secretary*, G.R. No. 96409 February 14, 1992, 206 SCRA 290, 295.



Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

“Control,” in this context, is defined in jurisprudence as “the power of [the President] to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.”² With this definition in mind, it becomes apparent that Section 70, Chapter 14, Title I, Book IV of EO 292 had been crafted to enable the President to exercise this power of control over his alter-egos by allowing him to substitute their judgment with his own, which in this case permits the President to reverse the finding of the DOJ acting as a quasi-judicial body on appeal.

Appeal to the Office of the President likewise finds support in the doctrine on exhaustion of administrative remedies. The rule calls for a party to first avail of all the means afforded him by administrative processes before seeking intervention of the court, so as not to deprive these agencies of their authority and opportunity to deliberate on the issues of the case.³ In the same vein, the doctrine allows the President to correct the actions of his subordinates, including those of the SOJ, before these can be questioned in a court of law.

Judicial recourse from the exercise of administrative agencies of quasi-judicial powers is to the Court of Appeals (CA), **save for those directly appealable to this Court.** This finds basis under Section 9 of *Batas Pambansa* Blg. 129,⁴ as amended by RA 7902,⁵ which grants the CA with general appellate jurisdiction over judgments of quasi-judicial bodies, *viz*:

Sec. 9. Jurisdiction. — The Court of Appeals shall exercise:

x x x x


(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts **and quasi-judicial agencies, instrumentalities, boards or commissions**, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, **except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution**, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

² *Mondano v. Silvosa*, 97 Phil. 143 (1955).

³ *Fua, Jr. v. Commission on Audit*, G.R. No. 175803, December 4, 2009, 607 SCRA347, 352.

⁴ AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

⁵ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF APPEALS, AMENDING FOR THE PURPOSE SECTION NINE OF BATAS PAMBANSA BLG. 129, AS AMENDED, KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980.



As identified in Section 1, Rule 43 of the Rules of Court,⁶ the Office of the President is among the governmental bodies whose rulings fall under the CA's appellate jurisdiction. Be that as it may and with all due respect to Justice Carpio, it is humbly submitted that, by way of exception, direct recourse to this Court is justified insofar as tax controversies solely between government institutions that have been resolved by the Office of the President are concerned.

A review of recent jurisprudence reveals that the thrust of the Court has been to divest the CA of jurisdiction over tax-related controversies. To illustrate, the Court *En Banc* in the recent case of *City of Manila v. Grecia-Cuerdo* ruled that it is not the CA, but the CTA, that is the proper forum for challenging interlocutory orders issued by the RTC in cases that would fall within the jurisdiction of the CTA on appeal.⁷ In devolving from the CA the exercise of *certiorari* powers in favor of the CTA, the Court held that:

x x x [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.⁸

And in *Philippine American Life and General Insurance Company v. Secretary of Finance*, We recognized that there was a trend wherein both the CTA and the CA disclaim jurisdiction over tax cases: on the one hand, mere prayer for the declaration of a tax measure's unconstitutionality or invalidity before the CTA resulted in a petition's outright dismissal, and on the other hand, the CA would dismiss the same petition should it find that the primary issue is not the tax measure's validity but the assessment or taxability of the transaction or subject involved.⁹ In punctuating the issue, We held that, pursuant to the CTA's power of *certiorari* recognized in *City of Manila v. Grecia-Cuerdo*, appeals from the ruling of the Secretary of Finance is to the CTA, not the CA, even though the case involved a challenge against the validity of a revenue regulation, thus:

⁶ Section 1. *Scope.* — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (emphasis added)

⁷ G.R. No. 175723, February 4, 2014, 715 SCRA 182, 202.

⁸ *Id.*

⁹ G.R. No. 210987, November 24, 2014, 741 SCRA 578, 597.

x x x x [I]t is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.¹⁰

The policy has therefore been clear – to transfer appellate jurisdiction over tax-related controversies from the CA to the CTA. It would then be an act of regression for the Court to once again vest the CA with jurisdiction over cases concerning the interpretation of tax statutes, similar to the subject matter of the case at bar, simply because it was appealed from the Office of the President.

One may then be tempted to presume that judicial recourse from the ruling of the Office of the President over a tax-related dispute is to the CTA. However, We have already categorically ruled herein that it is the DOJ, rather than the CTA, that has jurisdiction over the controversy. To later on declare that the CTA may nevertheless exercise appellate jurisdiction over the ruling of the Office of the President would run counter to this earlier pronouncement, and would also unduly lengthen the proceedings by burdening the aggrieved party to appeal the case to two more bodies, the CTA Division and CTA *En Banc*, before the case reaches this Court.

Moreover, the CTA does not have appellate jurisdiction over tax controversies resolved by the Office of the President. To be sure, Republic Act No. (RA) 1125,¹¹ as amended by RA 9282,¹² delineates the jurisdiction of the CTA in the following manner:

Sec. 7. Jurisdiction. - The CTA shall exercise:

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

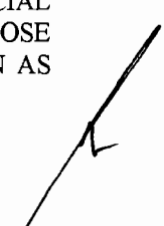
1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal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

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

¹⁰ Id. at 600.

¹¹ AN ACT CREATING THE COURT OF TAX APPEALS.

¹² AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.



National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

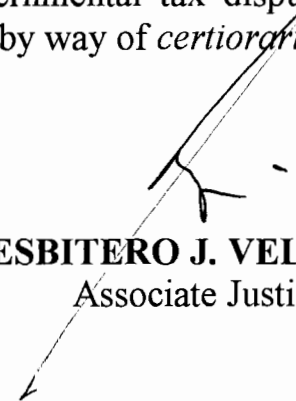
7. Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The CTA, as a specialized court, enjoys jurisdiction limited to those specifically mentioned in the law. Noteworthy is that the exhaustive enumeration aforequoted does not include appeals from the Office of the President. Thus, the CTA could not be deemed to have been bestowed with the authority to review the said rulings regardless of whether or not the dispute involves the interpretation of tax laws.

With both the CA and the CTA unable to exercise appellate jurisdiction over rulings of the Office of the President in tax-related controversies, it becomes evident that there is no plain, speedy, and adequate remedy available to the government agency aggrieved. Direct recourse to this Court *via certiorari* should then be permissible under such circumstances in fulfillment of Our role as the final arbiter and court of last resort, and of Our constitutional mandate and bounden duty to settle justiciable controversies.


In view of the foregoing, I reiterate my concurrence with the holding of the *ponencia* that the DOJ properly exercised jurisdiction over the controversy between the conflicting arms of the government, and that, for

future reference, appeal should be taken by the aggrieved agency to the Office of the President. It is humbly submitted, however, that appeals from the Office of the President in inter-governmental tax disputes should be elevated to this Court, rather than the CA, by way of *certiorari*.



PRESBITERO J. VELASCO, JR.
Associate Justice

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FELIPA B. ANAMA
CLERK OF COURT, EN BANG
SUPREME COURT