REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila
EN BANC

G.R. No. 109976 April 26, 2005

PHILIPPINE NATIONAL OIL COMPANY, Petitioner,
vs.
THE HON. COURT OF APPEALS, THE COMMISSIONER OF INTERNAL REVENUE and TIRSO SAVELLANO, Respondents.

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G.R. No. 112800 April 26, 2005

PHILIPPINE NATIONAL BANK, Petitioner,
vs.
THE HON. COURT OF APPEALS, COURT OF TAX APPEALS, TIRSO B. SAVELLANO and COMMISSIONER OF INTERNAL REVENUE, Respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a consolidation of two Petitions for Review on Certiorari filed by the Philippine National Oil Company (PNOC)[1] and the Philippine National Bank (PNB),<[2] assailing the decisions of the Court of Appeals in CA-G.R. SP No. 29583[3] and CA-G.R. SP No. 29526,[4] respectively, which both affirmed the decision of the Court of Tax Appeals (CTA) in CTA Case No. 4249.[5]

The Petitions before this Court originated from a sworn statement submitted by private respondent Tirso B. Savellano (Savellano) to the Bureau of Internal Revenue (BIR) on 24 June 1986. Through his sworn statement, private respondent Savellano informed the BIR that PNB had failed to withhold the 15% final tax on interest earnings and/or yields from the money placements of PNOC with the said bank, in violation of Presidential Decree (P.D.) No. 1931. P.D. No. 1931, which took effect on 11 June 1984, withdrew all tax exemptions of government-owned and controlled corporations.

In a letter, dated 08 August 1986, the BIR requested PNOC to settle its liability for taxes on the interests earned by its money placements with PNB and which PNB did not withhold.[6] PNOC wrote the BIR on 25 September 1986, and made an offer to compromise its tax liability, which it estimated to be in the sum of ₱304,419,396.83, excluding interest and surcharges, as of 31 July 1986. PNOC proposed to set-off its tax liability against a claim for tax refund/credit of the National Power Corporation (NAPOCOR), then pending with the BIR, in the amount of ₱335,259,450.21. The amount of the claim for tax refund/credit was supposedly a receivable account of PNOC from NAPOCOR.[7]

On 08 October 1986, the BIR sent a demand letter to PNB, as withholding agent, for the payment of the final tax on the interest earnings and/or yields from PNOC's money placements with the bank, from 15 October 1984 to 15 October 1986, in the total amount of ₱376,301,133.33.[8] On the same date, the BIR also mailed a letter to PNOC informing it of the demand letter sent to PNB.[9]

PNOC, in another letter, dated 14 October 1986, reiterated its proposal to settle its tax liability through the set-off of the said tax liability against NAPOCOR'S pending claim for tax refund/credit.[10] The BIR replied on 11 November

1986 that the proposal for set-off was premature since NAPOCOR's claim was still under process. Once more, BIR requested PNOC to settle its tax liability in the total amount of ₱385,961,580.82, consisting of ₱303,343,765.32 final tax, plus ₱82,617,815.50 interest computed until 15 November 1986.[11]

On 09 June 1987, PNOC made another offer to the BIR to settle its tax liability. This time, however, PNOC proposed a compromise by paying ₱91,003,129.89, representing 30% of the ₱303,343,766.29 basic tax, in accordance with the provisions of Executive Order (E.O.) No. 44.[12]

Then BIR Commissioner Bienvenido A. Tan, in a letter, dated 22 June 1987, accepted the compromise. The BIR received a total tax payment on the interest earnings and/or yields from PNOC's money placements with PNB in the amount of ₱93,955,479.12, broken down as follows:

Previous payment made by PNB	₱ 2,952,349.23
Add: Payment made by PNOC pursuant to the compromise agreement of June 22, 1987	₱ 91,003,129.89
Total tax payment	₱ 93,955,479.12[13]

Private respondent Savellano, through four installments, was paid the informer's reward in the total amount of ₱14,093,321.89, representing 15% of the ₱93,955,479.12 tax collected by the BIR from PNOC and PNB. He received the last installment on 01 December 1987.[14]

On 07 January 1988, private respondent Savellano, through his legal counsel, wrote the BIR to demand payment of the balance of his informer's reward, computed as follows:

BIR tax assessment	₱ 385,961,580.82
Final tax rate	0.15
Informer's reward due (BIR deficiency tax assessment x Final tax rate)	₱ 57,894,237.12
Less: Payment received by private respondent Savellano	₱ 14,093,321.89
Outstanding balance	₱ 43,800,915.25[15]

BIR Commissioner Tan replied through a letter, dated 08 March 1988, that private respondent Savellano was already fully paid the informer's reward equivalent to 15% of the amount of tax actually collected by the BIR pursuant to its compromise agreement with PNOC. BIR Commissioner Tan further explained that the compromise was in accordance with the provisions of E.O. No. 44, Revenue Memorandum Order (RMO) No. 39-86, and RMO No. 4-87.[16]

Private respondent Savellano submitted another letter, dated 24 March 1988, to BIR Commissioner Tan, seeking reconsideration of his decision to compromise the tax liability of PNOC. In the same letter, private respondent Savellano questioned the legality of the compromise agreement entered into by the BIR and PNOC and claimed that the tax liability should have been collected in full.[17]

On 08 April 1988, while the aforesaid Motion for Reconsideration was still pending with the BIR, private respondent Savellano filed a Petition for Review *ad cautelam* with the CTA, docketed as CTA Case No. 4249. He claimed therein that BIR Commissioner Tan acted "with grave abuse of discretion and/or whimsical exercise of jurisdiction" in entering into a compromise agreement that resulted in "a gross and unconscionable diminution" of his reward. Private respondent Savellano prayed for the enforcement and collection of the total tax assessment against taxpayer PNOC and/or withholding agent PNB; and the payment to him by the BIR Commissioner of the 15% informer's reward on the total tax collected.[18] He would later amend his Petition to implead PNOC and PNB as necessary and indispensable parties since they were parties to the compromise agreement.[19]

In his Answer filed with the CTA, BIR Commissioner Tan asserted that the Petition stated no cause of action against him, and that private respondent Savellano was already paid the informer's reward due him. Alleging that the Petition was baseless and malicious, BIR Commissioner Tan filed a counterclaim for exemplary damages against private respondent Savellano.[20]

PNOC and PNB filed separate Motions to Dismiss, both arguing that the CTA lacked jurisdiction to decide the case.[21] In its Resolution, dated 28 November 1988, the CTA denied the Motions to Dismiss since the question of lack of jurisdiction and/or cause of action do not appear to be indubitable.[22]

After their Motions to Dismiss were denied by the CTA, PNOC and PNB filed their respective Answers to the amended Petition. PNOC averred, among other things, that (1) it had no privity with private respondent Savellano; (2) the BIR Commissioner's discretionary act in entering into the compromise agreement had legal basis under E.O.

No. 44 and RMO No. 39-86 and RMO No. 4-87; and (3) the CTA had no jurisdiction to resolve the case against it.[23] On the other hand, PNB asserted that (1) the CTA lacked jurisdiction over the case; and (2) the BIR Commissioner's decision to accept the compromise was discretionary on his part and, therefore, cannot be reviewed or interfered with by the courts.[24] PNOC and PNB later filed their amended Answer invoking an opinion of the Commission on Audit (COA) disallowing the payment by the BIR of informer's reward to private respondent Savellano.[25]

The CTA, thereafter, ordered the parties to submit their evidence,[26] to be followed by their respective Memoranda.[27]

On 23 November 1990, private respondent Savellano, filed a Manifestation with Motion for Suspension of Proceedings, claiming that his pending Motion for Reconsideration with the BIR Commissioner may soon be resolved.[28] Both PNOC and PNB opposed the said Motion.[29]

Subsequently, the new BIR Commissioner, Jose U. Ong, in a letter to PNB, dated 16 January 1991, demanded that PNB pay deficiency withholding tax on the interest earnings and/or yields from PNOC's money placements, in the amount of P294,958,450.73, computed as follows:

Withholding tax, plus interest under the letter of demand dated November 11, 1986	₱ 385,961,580.82
Less: Amount paid under E.O. No. 44	₱ 91,003,129.89
Amount still due and collectible	₱ 294,958,450.73[30]

This BIR letter was received by PNB on 06 February 1991,[31] and was protested by it through a letter, dated 11 April 1991.[32] The BIR denied PNB's protest on the ground that it was filed out of time and, thus, the assessment had already become final.[33]

Private respondent Savellano, on 22 February 1991, filed an Omnibus Motion moving to withdraw his previous Motion for Suspension of Proceeding since BIR Commissioner Ong had finally resolved his Motion for Reconsideration, and submitting by way of supplemental offer of evidence (1) the letter of BIR Commissioner Ong, dated 13 February 1991, informing private respondent Savellano of the action on his Motion for Reconsideration; and (2) the demand-letter of BIR Commissioner Ong to PNB, dated 16 January 1991.[34]

Despite the oppositions of PNOC and PNB, the CTA, in a Resolution, dated 02 May 1991, resolved to allow private respondent Savellano to withdraw his previous Motion for Suspension of Proceeding and to admit the supplementary evidence being offered by the same party.[35]

In its Order, dated 03 June 1991, the CTA considered the case submitted for decision as of the following day, 04 June 1991.[36]

On 11 June 1991, PNB appealed to the Department of Justice (DOJ) the BIR assessment, dated 16 January 1991, for deficiency withholding tax in the sum of ₱294,958,450.73. PNB alleged that its appeal to the DOJ was sanctioned under P.D. No. 242, which provided for the administrative settlement of disputes between government offices, agencies, and instrumentalities, including government-owned and controlled corporations.[37]

Three days later, on 14 June 1991, PNB filed a Motion to Suspend Proceedings before the CTA since it had a pending appeal before the DOJ.[38] On 04 July 1991, PNB filed with the CTA a Motion for Reconsideration of its Order, dated 03 June 1991, submitting the case for decision as of 04 June 1991, and prayed that the CTA hold its resolution of the case in view of PNB's appeal pending before the DOJ.[39]

On 17 July 1991, PNB filed a Motion to Suspend the Collection of Tax by the BIR. It alleged that despite its request for reconsideration of the deficiency withholding tax assessment, dated 16 January 1991, BIR Commissioner Ong sent another letter, dated 23 April 1991, demanding payment of the ₱294,958,450.73 deficiency withholding tax on the interest earnings and/or yields from PNOC's money placements. The same letter informed PNB that this was the BIR Commissioner's final decision on the matter and that the BIR Commissioner was set to issue a warrant of distraint and/or levy against PNB's deposits with the Central Bank of the Philippines. PNB further alleged that the levy and distraint of PNB's deposits, unless restrained by the CTA, would cause great and irreparable prejudice not only to PNB, a government-owned and controlled corporation, but also to the Government itself.[40]

Pursuant to the Order of the CTA, during the hearing on 19 July 1991,[41] the parties submitted their respective Memoranda on PNB's Motion to Suspend Proceedings.[42]

On 20 September 1991, private respondent Savellano filed another Omnibus Motion calling the attention of the CTA to the fact that the BIR already issued, on 12 August 1991, a warrant of garnishment addressed to the Central Bank Governor and against PNB. In compliance with the said warrant, the Central Bank issued, on 23 August 1991, a debit advice against the demand deposit account of PNB with the Central Bank for the amount of ₱294,958,450.73, with a corresponding transfer of the same amount to the demand deposit-in-trust of BIR with the Central Bank. Since the assessment had already been enforced, PNB's Motion to Suspend Proceedings became moot and

academic. Private respondent Savellano, thus, moved for the denial of PNB's Motion to Suspend Proceedings and for an order requiring BIR to deposit with the CTA the amount of ₱44,243,767.00 as his informer's reward, representing 15% of the deficiency withholding tax collected.[43]

Both PNOC and PNB opposed private respondent Savellano's Omnibus Motion, dated 20 September 1991, arguing that the DOJ already ordered the suspension of the collection of the tax deficiency. There was therefore no basis for private respondent Savellano's Motion as the same was premised on the erroneous assumption that the tax deficiency had been collected. When the DOJ denied the BIR Commissioner's Motion to Dismiss and required him to file his answer, the DOJ assumed jurisdiction over PNB's appeal, and the CTA should first suspend its proceedings to give the DOJ the opportunity to decide the validity and propriety of the tax assessment against PNB.[44]

The CTA, on 28 May 1992, rendered its decision, wherein it upheld its jurisdiction and disposed of the case as follows:

> WHEREFORE, judgment is rendered declaring the COMPROMISE AGREEMENT between the Bureau of Internal Revenue, on the one hand, and the Philippine National Oil Company and Philippine National Bank, on the other, as WITHOUT FORCE AND EFFECT;
>
> The Commissioner of Internal Revenue is hereby ordered to ENFORCE the ASSESSMENT of January 16, 1991 against Philippine National Bank which has become final and unappealable by collecting from Philippine National Bank the deficiency withholding tax, plus interest totalling (sic) ₱294,958,450.73;
>
> Petitioner may be paid, upon collection of the deficiency withholding tax, the balance of his entitlement to informer's reward based on fifteen percent (15%) of the deficiency withholding total tax collected in this case or ₱44,243.767.00 subject to existing rules and regulations governing payment of reward to informers.[45]

In a Resolution, dated 16 November 1992, the CTA denied the Motions for Reconsideration filed by PNOC and PNB since they substantially raised the same issues in their previous pleadings and which had already been passed upon and resolved adversely against them.[46]

PNOC and PNB filed separate appeals with the Court of Appeals seeking the reversal of the CTA decision in CTA Case No. 4249, dated 28 May 1992, and the CTA Resolution in the same case, dated 16 November 1992. PNOC's appeal was docketed as CA-G.R. SP No. 29583, while PNB's appeal was CA-G.R. SP No. 29526. In both cases, the Court of Appeals affirmed the decision of the CTA.

In the meantime, the Central Bank again issued on 02 September 1992 a debit advice against the demand deposit account of PNB with the Central Bank for the amount of ₱294,958,450.73,[47] and on 15 September 1992, credited the same amount to the demand deposit account of the Treasurer of the Republic of the Philippines.[48] On 04 November 1992, the Treasurer of the Republic issued a journal voucher transferring ₱294,958,450.73 to the account of the BIR.[49] PNB, in turn, debited ₱294,958,450.73 from the deposit account of PNOC with PNB.[50]

PNOC and PNB then filed separate Petitions for Review on Certiorari with this Court, praying that the decisions of the Court of Appeals in CA-G.R. SP No. 29583 and CA-G.R. SP No. 29526, respectively, both affirming the decision of the CTA in CTA Case No. 4249, be reversed and set aside. These two Petitions were consolidated since they involved identical parties and factual background, and the resolution of related, if not exactly, the same issues.

In its Petition for Review, PNOC alleged the following errors committed by the Court of Appeals in CA-G.R. SP No. 29583:

> 1. The Court of Appeals erred in holding that the deficiency taxes of PNOC could not be the subject of a compromise under Executive Order No. 44; and
>
> 2. The Court of Appeals erred in holding that Savellano is entitled to additional informer's reward.[51]

PNB, in its own Petition for Review, assailed the decision of the Court of Appeals in CA-G.R. SP No. 29526, assigning the following errors:

> 1. Respondent Court erred in not finding that the Court of Tax Appeals lacks jurisdiction on the controversy involving BIR and PNB (both government instrumentalities) regarding the new assessment of BIR against PNB;
>
> 2. The respondent Court erred in not finding that the Court of Tax Appeals has no jurisdiction to question the compromise agreement entered into by the Commissioner of Internal Revenue; and
>
> 3. The respondent Court erred in not ruling that the Commissioner of Internal Revenue cannot unilaterally annul tax compromises validly entered into by his predecessor.[52]

The decisions of the Court of Appeals in CA-GR SP No. 29583 and CA-G.R. SP No. 29526, affirmed the decision of the CTA in CTA Case No. 4249. The resolution, therefore, of the assigned errors in the Court of Appeals' decisions essentially requires a review of the CTA decision itself.

In consolidating the present Petitions, this Court finds that PNOC and PNB are basically questioning the (1) Jurisdiction of the CTA in CTA Case No. 4249; (2) Declaration by the CTA that the compromise agreement was without force and effect; (3) Finding of the CTA that the deficiency withholding tax assessment against PNB had already become final and unappealable and, thus, enforceable; and (4) Order of the CTA directing payment of additional informer's reward to private respondent Savellano.

I

Jurisdiction of the CTA

A. *The demand letter, dated 16 January 1991 did not constitute a new assessment against PNB.*

The main argument of PNB in assailing the jurisdiction of the CTA in CTA Case No. 4249 is that the BIR demand letter, dated 16 January 1991,[53] should be considered as a new assessment against PNB. As a new assessment, it gave rise to a new dispute and controversy solely between the BIR and PNB that should be administratively settled or adjudicated, as provided in P.D. No. 242.

This argument is without merit. The issuance by the BIR of the demand letter, dated 16 January 1991, was merely a development in the continuing effort of the BIR to collect the tax assessed against PNOC and PNB way back in 1986.

BIR's first letter, dated 08 August 1986, was addressed to PNOC, requesting it to settle its tax liability. The BIR subsequently sent another letter, dated 08 October 1986, to PNB, as withholding agent, demanding payment of the tax it had failed to withhold on the interest earnings and/or yields from PNOC's money placements. PNOC wrote the BIR three succeeding letters offering to compromise its tax liability; PNB, on the other hand, did not act on the demand letter it received, dated 08 October 1986. The BIR and PNOC eventually reached a compromise agreement on 22 June 1987. Private respondent Savellano questioned the validity of the compromise agreement because the reduced amount of tax collected from PNOC, by virtue of the compromise agreement, also proportionately reduced his informer's reward. Private respondent Savellano then requested the BIR Commissioner to review and reconsider the compromise agreement. Acting on the request of private respondent Savellano, the new BIR Commissioner declared the compromise agreement to be without basis and issued the demand letter, dated 16 January 1991, against PNB, as the withholding agent for PNOC.

It is clear from the foregoing that the BIR demand letter, dated 16 January 1991, could not stand alone as a new assessment. It should always be considered in the factual context summarized above.

In fact, the demand letter, dated 16 January 1991, actually referred to the withholding tax assessment first issued in 1986 and its eventual settlement through a compromise agreement. In addition, the computation of the deficiency withholding tax was based on the figures from the 1986 assessments against PNOC and PNB, and BIR no longer conducted a new audit or investigation of either PNOC and PNB before it issued the demand letter on 16 January 1991.

These constant references to past events and circumstances demonstrate that the demand letter, dated 16 January 1991, was not a new assessment, but rather, the latest action taken by the BIR to collect on the tax assessments issued against PNOC and PNB in 1986.

PNB argues that the demand letter, dated 16 January 1991, introduced a new controversy. We see it differently as the said demand letter presented the resolution by BIR Commissioner Ong of the previous controversy involving the compromise of the 1986 tax assessments. BIR Commissioner Ong explicitly declared therein that the compromise agreement was without legal basis, and requested PNB, as the withholding agent, to pay the amount of withholding tax still due.

B. The CTA correctly retained jurisdiction over CTA Case No. 4249 by virtue of Republic Act No. 1125.

Having established that the BIR demand letter, dated 16 January 1991, did not constitute a new assessment, then, there could be no basis for PNB's claim that any dispute arising from the new assessment should only be between BIR and PNB.

Still proceeding from the argument that there was a new dispute between PNB and BIR, PNB sought the suspension of the proceedings in CTA Case No. 4249, after it contested the deficiency withholding tax assessment against it and the demand for payment thereof before the DOJ, pursuant to P.D. No. 242. The CTA, however, correctly sustained its jurisdiction and continued the proceedings in CTA Case No. 4249; and, in effect, rejected DOJ's claim of jurisdiction to administratively settle or adjudicate BIR's assessment against PNB.

The CTA assumed jurisdiction over the Petition for Review filed by private respondent Savellano based on the following provision of Rep. Act No. 1125, the Act creating the Court of Tax Appeals:

> SECTION 7. *Jurisdiction*. – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> > (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; . . . (Underscoring ours.)

In his Petition before the CTA, private respondent Savellano requested a review of the decisions of then BIR Commissioner Tan to enter into a compromise agreement with PNOC and to reject his claim for additional informer's reward. He submitted before the CTA questions of law involving the interpretation and application of (1) E.O. No. 44, and its implementing rules and regulations, which authorized the BIR Commissioner to compromise delinquent accounts and disputed assessments pending as of 31 December 1985; and (2) Section 316(1) of the National Internal Revenue Code of 1977 (NIRC of 1977), as amended, which granted to the informer a reward equivalent to 15% of the actual amount recovered or collected by the BIR.[54] These should undoubtedly be considered as matters arising from the NIRC and other laws being administered by the BIR, thus, appealable to the CTA under Section 7(1) of Rep. Act No. 1125.

PNB, however, insists on the jurisdiction of the DOJ over its appeal of the deficiency withholding tax assessment by virtue of P.D. No. 242. Provisions on jurisdiction of P.D. No. 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 government-owned or controlled corporations, but excluding constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter; *Provided*, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.
>
> 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* legal 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 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 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).

The PNB and DOJ are of the same position that P.D. No. 242, the more recent law, repealed Section 7(1) of Rep. Act No. 1125,[55] based on the pronouncement of this Court in *Development Bank of the Philippines v. Court of Appeals, et al.*, [56] quoted below:

> The Court … expresses its entire agreement with the conclusion of the Court of Appeals — and the basic premises thereof — that there is an "irreconcilable repugnancy…between Section 7(2) of R.A. No. 1125 and P.D. No. 242," and hence, that the later enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier.

In the said case, it was expressly declared that P.D. No. 242 repealed Section 7(2) of Rep. Act No. 1125, which provides for the exclusive appellate jurisdiction of the CTA over decisions of the Commissioner of Customs. PNB contends that P.D. No. 242 should be deemed to have likewise repealed Section 7(1) of Rep. Act No. 1125, which provide for the exclusive appellate jurisdiction of the CTA over decisions of the BIR Commissioner.[57]

After re-examining the provisions on jurisdiction of Rep. Act No. 1125 and P.D. No. 242, this Court finds itself in disagreement with the pronouncement made in *Development Bank of the Philippines v. Court of Appeals, et al.,*[58]

and refers to the earlier case of Lichauco & Company, Inc. v. Apostol, et al.,[59] for the guidelines in determining the relation between the two statutes in question, to wit:

> The cases relating to the subject of repeal by implication all proceed on the assumption that if the act of later date clearly reveals an intention on the part of the law making power to abrogate the prior law, this intention must be given effect; but there must always be a sufficient revelation of this intention, and it has become an unbending rule of statutory construction that the intention to repeal a former law will not be imputed to the Legislature when it appears that the two statutes, or provisions, with reference to which the question arises bear to each other the relation of general to special. (Underscoring ours.)

When there appears to be an inconsistency or conflict between two statutes and one of the statutes is a general law, while the other is a special law, then repeal by implication is not the primary rule applicable. The following rule should principally govern instead:

> Specific legislation upon a particular subject is not affected by a general law upon the same subject unless it clearly appears that the provisions of the two laws are so repugnant that the legislators must have intended by the later to modify or repeal the earlier legislation. The special act and the general law must stand together, the one as the law of the particular subject and the other as the general law of the land. (*Ex Parte United States, 226 U. S., 420; 57 L. ed., 281; Ex Parte Crow Dog, 109 U. S., 556; 27 L. ed., 1030; Partee vs. St. Louis & S. F. R. Co.*, 204 Fed. Rep., 970.)
>
> Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a conflict. (*Crane v. Reeder and Reeder, 22 Mich., 322, 334; University of Utah vs. Richards*, 77 Am. St. Rep., 928.)[60]

It has, thus, become an established rule of statutory construction that between a general law and a special law, the special law prevails – *Generalia specialibus non derogant*.[61]

Sustained herein is the contention of private respondent Savellano that P.D. No. 242 is a general law that deals with administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or controlled corporations. Its coverage is broad and sweeping, encompassing all disputes, claims and controversies. It has been incorporated as Chapter 14, Book IV of E.O. No. 292, otherwise known as the Revised Administrative Code of the Philippines.[62] On the other hand, Rep. Act No. 1125 is a special law[63] dealing with a specific subject matter – the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein.

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

Even if, for the sake of argument, that P.D. No. 242 should prevail over Rep. Act No. 1125, the present dispute would still not be covered by P.D. No. 242. Section 1 of P.D. No. 242 explicitly provides that only disputes, claims and controversies ***solely*** between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices or agencies, as well as government-owned and controlled corporations, shall be administratively settled or adjudicated. While the BIR is obviously a government bureau, and both PNOC and PNB are government-owned and controlled corporations, respondent Savellano is a private citizen. His standing in the controversy could not be lightly brushed aside. It was private respondent Savellano who gave the BIR the information that resulted in the investigation of PNOC and PNB; who requested the BIR Commissioner to reconsider the compromise agreement in question; and who initiated CTA Case No. 4249 by filing a Petition for Review.

In *Bay View Hotel, Inc. v. Manila Hotel Workers' Union-PTGWO, et al.*,[64] this Court upheld the jurisdiction of the Court of Industrial Relations over the ordinary courts and justified its decision in the following manner:

> We are unprepared to break away from the teaching in the cases just adverted to. To draw a tenuous jurisdictional line is to undermine stability in labor litigations. A piecemeal resort to one court and another gives rise to multiplicity of suits. To force the employees to shuttle from one court to another to secure full redress is a situation gravely prejudicial. The time to be lost, effort wasted, anxiety augmented, additional expense incurred – these are considerations which weigh heavily against split jurisdiction. Indeed, it is more

in keeping with orderly administration of justice that all the causes of action here "be cognizable and heard by only one court: the Court of Industrial Relations."

The same justification is used in the present case to reject DOJ's jurisdiction over the BIR and PNB, to the exclusion of the other parties. The rights of all four parties in CTA Case No. 4249, namely the BIR, as the tax collector; PNOC, the taxpayer; PNB, the withholding agent; and private respondent Savellano, the informer claiming his reward; arose from the same factual background and were so closely interrelated, that a pronouncement as to one would definitely have repercussions on the others. The ends of justice were best served when the CTA continued to exercise its jurisdiction over CTA Case No. 4249. The CTA, which had assumed jurisdiction over all the parties to the controversy, could render a comprehensive resolution of the issues raised and grant complete relief to the parties.

II

Validity of the Compromise Agreement

A. PNOC could not apply for a compromise under E.O. No. 44 because its tax liability was not a delinquent account or a disputed assessment as of 31 December 1985.

PNOC and PNB, on different grounds, dispute the decision of the CTA in CTA Case No. 4249 declaring the compromise agreement between BIR and PNOC without force and effect.

PNOC asserts that the compromise agreement was in accordance with E.O. No. 44, and its implementing rules and regulations, and should be binding upon the parties thereto.

E.O. No. 44 granted the BIR Commissioner or his duly authorized representatives the power to compromise any disputed assessment or delinquent account pending as of 31 December 1985, upon the payment of an amount equal to 30% of the basic tax assessed; in which case, the corresponding interests and penalties shall be condoned. E.O. No. 44 took effect on 04 September 1986 and remained effective until 31 March 1987.

The disputed assessments or delinquent accounts that the BIR Commissioner could compromise under E.O. No. 44 are defined under Revenue Regulation (RR) No. 17-86, as follows:

a) Delinquent account – Refers to the amount of tax due on or before December 31, 1985 from a taxpayer who failed to pay the same within the time prescribed for its payment arising from (1) a self assessed tax, whether or not a tax return was filed, or (2) a deficiency assessment issued by the BIR which has become final and executory.

Where no return was filed, the taxpayer shall be considered delinquent as of the time the tax on such return was due, and in availing of the compromise, a tax return shall be filed as a basis for computing the amount of compromise to be paid.

b) Disputed assessment – refers to a tax assessment disputed or protested on or before December 31, 1985 under any of the following categories:

1) if the same is administratively protested within thirty (30) days from the date the taxpayer received the assessment, or

2.) if the decision of the BIR on the taxpayer's administrative protest is appealed by the taxpayer before an appropriate court.

PNOC's tax liability could not be considered a delinquent account since (1) it was not self-assessed, because the BIR conducted an investigation and assessment of PNOC and PNB after obtaining information regarding the non-withholding of tax from private respondent Savellano; and (2) the demand letter, issued against it on 08 August 1986, could not have been a deficiency assessment that became final and executory by 31 December 1985.

The dissenting opinion contends, however, that the tax liability of PNOC constitutes a self-assessed tax, and is, therefore, a delinquent account as of 31 December 1985, qualifying for a compromise under E.O. No. 44. It anchors its argument on the declaration made by this Court in *Tupaz v. Ulep*,[65] that internal revenue taxes are self-assessing.

It is not denied herein that the self-assessing system governs Philippine internal revenue taxes. The dissenting opinion itself defines self-assessed tax as, "a tax that the taxpayer himself assesses or computes and pays to the taxing authority." Clearly, such a system imposes upon the taxpayer the obligation to conduct an assessment of himself so he could determine and declare the amount to be used as tax basis, any deductions therefrom, and finally, the tax due.

E.O. No. 44 covers self-assessed tax, whether or not a tax return was filed. The phrase "whether or not a tax return was filed" only refers to the compliance by the taxpayer with the obligation to file a return on the dates specified by

law, but it does not do away with the requisite that the tax must be self-assessed in order for the taxpayer to avail of the compromise. The second paragraph of Section 2(a) of RR No. 17-86 expressly commands, and still imposes upon the taxpayer, who is availing of the compromise under E.O. No. 44, and who has not previously filed any return, the duty to conduct self-assessment by filing a tax return that would be used as the basis for computing the amount of compromise to be paid.

Section 2(a)(1) of RR No. 17-86 thus involves a situation wherein a taxpayer, after conducting a self-assessment, discovers or becomes aware that he had failed to pay a tax due on or before 31 December 1985, regardless of whether he had previously filed a return to reflect such tax; voluntarily comes forward and admits to the BIR his tax liability; and applies for a compromise thereof. In case the taxpayer has not previously filed any return, he must fill out such a return reflecting therein his own declaration of the taxable amount and computation of the tax due. The compromise payment shall be computed based on the amount reflected in the tax return submitted by the taxpayer himself.

Neither PNOC nor PNB, the taxpayer and the withholding agent, respectively, conducted self-assessment in this case. There is no showing that in the absence of the tax assessment issued by the BIR against them, that PNOC and/or PNB would have voluntarily admitted their tax liabilities, already amounting to ₱385,961,580.82, as of 15 November 1986, and would have offered to compromise the same. In fact, both PNOC and PNB were conspicuously silent about their tax liabilities until they were assessed thereon.

Any attempt by PNOC and PNB to assess and declare by themselves their tax liabilities had already been overtaken by the BIR's conduct of its audit and investigation and subsequent issuance of the assessments, dated 08 August 1986 and 08 October 1986, against PNOC and PNB, respectively. The said tax assessments, uncontested and undisputed, presented the results of the BIR audit and investigation and the computation of the total amount of tax liabilities of PNOC and PNB. They should be controlling in this case, and should not be so easily and conveniently ignored and set aside. It would be a contradiction to claim that the tax liabilities of PNOC and PNB are self-assessed and, at the same time, BIR-assessed; when it is clear and simple that it had been the BIR that conducted the assessment and determined the tax liabilities of PNOC and PNB.

That the BIR-assessed tax liability should be differentiated from a self-assessed one, is supported by the provisions of RR No. 17-86 on the basis for computing the amount of compromise payment. Note that where tax liabilities are self-assessed, the compromise payment shall be computed based on the tax return filed by the taxpayer.[66] On the other hand, where the BIR already issued an assessment, the compromise payment shall be computed based on the tax due on the assessment notice.[67]

For instances where the BIR had already issued an assessment against the taxpayer, the tax liability could still be compromised under E.O. No. 44 only if: (1) the assessment had been final and executory on or before 31 December 1985 and, therefore, considered a delinquent account as of said date;[68] or (2) the assessment had been disputed or protested on or before 31 December 1985.[69]

RMO No. 39-86, which provides the guidelines for the implementation of E.O. No. 44, does mention different types of assessments that may be compromised under said statute (i.e., jeopardy assessments, arbitrary assessments, and tax assessments of doubtful validity). RMO No. 39-86 may not have expressly stated any qualification for these particular types of assessments; nonetheless, E.O. No. 44 specifically refers only to assessments that were delinquent or disputed ***as of 31 December 1985***.

E.O. No. 44 and all BIR issuances to implement said statute should be interpreted so that they are harmonized and consistent with each other. Accordingly, this Court finds that the different types of assessments mentioned in RMO No. 39-86 would still have to qualify as delinquent accounts or disputed assessments as of 31 Dcember 1985, so that they could be compromised under E.O. No. 44.

The BIR had first written to PNOC on 08 August 1986, demanding payment of the income tax on the interest earnings and/or yields from PNOC's money placements with PNB from 15 October 1984 to 15 October 1986. This demand letter could be regarded as the first assessment notice against PNOC.

Such an assessment, issued only on 08 August 1986, could not have been final and executory as of 31 December 1985 so as to constitute a delinquent account. Neither was the assessment against PNOC an assessment that could have been disputed or protested on or before 31 December 1985, having been issued on a later date.

Given that PNOC's tax liability did not constitute a delinquent account or a disputed assessment as of 31 December 1985, then it could not be compromised under E.O. No. 44.

The assessment against PNOC, instead, was more appropriately covered by Revenue Memorandum Circular (RMC) No. 31-86. RMC No. 31-86 clarifies the scope of availment of the tax amnesty under E.O. No. 41[70] and compromise payments on delinquent accounts and disputed assessments under E.O. No. 44. The third paragraph of RMC No. 31-86 reads:

> [T]axpayers against whom assessments had been issued from January 1 to August 21, 1986 may settle their tax liabilities by way of compromise under Section 246 of the Tax Code as amended by paying 30% of the basic assessment excluding surcharge, interest, penalties and other increments thereto.

The above-quoted paragraph supports the position that only assessments that were disputed or that were final and executory by 31 December 1985 could be the subject of a compromise under E.O. No. 44. Assessments issued between 01 January to 21 August 1986 could still be compromised by payment of 30% of the basic tax assessed, not anymore pursuant to E.O. No. 44, but pursuant to Section 246 of the NIRC of 1977, as amended.

Section 246 of the NIRC of 1977, as amended, granted the BIR Commissioner the authority to compromise the payment of any internal revenue tax under the following circumstances: (1) there exists a reasonable doubt as to the validity of the claim against the taxpayer; or (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.[71]

There are substantial differences in circumstances under which compromises may be granted under Section 246 of the NIRC of 1977, as amended, and E.O. No. 44. Although PNOC and PNB have extensively argued their entitlement to compromise under E.O. No. 44, neither of them has alleged, much less, has presented any evidence to prove that it may compromise its tax liability under Section 246 of the NIRC of 1977, as amended.

B. The tax liability of PNB as withholding agent also did not qualify for compromise under E.O. No. 44.

Before proceeding any further, this Court reconsiders the conclusion made by BIR Commissioner Ong in his demand letter, dated 16 January 1991, that the compromise settlement executed between the BIR and PNOC was without legal basis because withholding taxes were not actually taxes that could be compromised, but a penalty for PNB's failure to withhold and for which it was made personally liable.

E.O. No. 44 covers disputed or delinquency cases where the person assessed was himself the taxpayer rather than a mere agent.[72] RMO No. 39-86 expressly allows a withholding agent, who failed to withhold the required tax because of neglect, ignorance of the law, or his belief that he was not required by law to withhold tax, to apply for a compromise settlement of his withholding tax liability under E.O. No. 44. A withholding agent, in such a situation, may compromise the withholding tax assessment against him precisely because he is being held directly accountable for the tax.[73]

RMO No. 39-86 distinguishes between the withholding agent in the foregoing situation from the withholding agent who withheld the tax but failed to remit the amount to the Government. A withholding agent in the latter situation is the one disqualified from applying for a compromise settlement because he is being made accountable as an agent, who held funds in trust for the Government.[74]

Both situations, however, involve withholding agents. The right to compromise under these provisions should have been claimed by PNB, the withholding agent for PNOC. The BIR held PNB personally accountable for its failure to withhold the tax on the interest earnings and/or yields from PNOC's money placements with PNB. The BIR sent a demand letter, dated 08 October 1986, addressed directly to PNB, for payment of the withholding tax assessed against it, but PNB failed to take any action on the said demand letter. Yet, all the offers to compromise the withholding tax assessment came from PNOC and PNOC did not claim that it made the offers to compromise on behalf of PNB.

Moreover, the general requirement of E.O. No. 44 still applies to withholding agents – that the withholding tax liability must either be a delinquent account or a disputed assessment as of 31 December 1985 to qualify for compromise settlement. The demand letter against PNB, which also served as its assessment notice, had been issued on 08 October 1986 or two months later than PNOC's. PNB's withholding tax liability could not be considered a delinquent account or a disputed assessment, as defined under RR No. 17-86, for the same reasons that PNOC's tax liability did not constitute as such. The tax liability of PNB, therefore, was also not eligible for compromise settlement under E.O. No. 44.

> C. *Even assuming arguendo that PNOC and/or PNB qualified under E.O. No. 44, their application for compromise was filed beyond the deadline.*

Despite already ruling that the tax liabilities of PNOC and PNB could not be compromised under E.O. No. 44, this Court still deems it necessary to discuss the finding of the CTA that the compromise agreement had been filed beyond the effectivity of E.O. No. 44, since the CTA made a declaration in relation thereto that paragraph 2 of RMO No. 39-86 was null and void for unduly extending the effectivity of E.O. No. 44.

Paragraph 2 of RMO No. 39-86 provides that:

> 2. Period for availment. – Filing of application for compromise settlement under the said law shall be effective only until March 31, 1987. Applications filed on or before this date shall be valid even if the payment or

payments of the compromise amount shall be made after the said date, subject, however, to the provisions of Executive Order No. 44 and its implementing Revenue Regulations No. 17-86.

It is well-settled in this jurisdiction that administrative authorities are vested with the power to make rules and regulations because it is impracticable for the lawmakers to provide general regulations for various and varying details of management. The interpretation given to a rule or regulation by those charged with its execution is entitled to the greatest weight by the court construing such rule or regulation, and such interpretation will be followed unless it appears to be clearly unreasonable or arbitrary.[75]

RMO No. 39-86, particularly paragraph 2 thereof, does not appear to be unreasonable or arbitrary. It does not unduly expand the coverage of E.O. No. 44 by merely providing that applications for compromise filed until 31 March 1987 are still valid, even if payment of the compromised amount is made on a later date.

It cannot be expected that the compromise allowed under E.O. No. 44 can be automatically granted upon mere filing of the application by the taxpayer. Irrefutably, the applications would still have to be processed by the BIR to determine compliance with the requirements of E.O. No. 44. As it is uncontested that a taxpayer could still file an application for compromise on 31 March 1987, the very last day of effectivity of E.O. No. 44, it would be unreasonable to expect the BIR to process and approve the taxpayer's application within the same date considering the volume of applications filed and pending approval, plus the other matters the BIR personnel would also have to attend to. Thus, RMO No. 39-86 merely assures the taxpayers that their applications would still be processed and could be approved on a later date. Payment, of course, shall be made by the taxpayer only after his application had been approved and the compromised amount had been determined.

Given that paragraph 2 of RMO No. 39-86 is valid, the next question that needs to be addressed is whether PNOC had been able to submit an application for compromise on or before 31 March 1987 in compliance thereof. Although the compromise agreement was executed only on 22 June 1987, PNOC is claiming that it had already written a letter to the BIR, as early as 25 September 1986, offering to compromise its tax liability, and that the said letter should be considered as PNOC's application for compromise settlement.

A perusal of PNOC's letter, dated 25 September 1986, would reveal, however, that the terms of its proposed compromise did not conform to those authorized by E.O. No. 44. PNOC did not offer to pay outright 30% of the basic tax assessed against it as required by E.O. No. 44; and instead, made the following offer:

> (2) That PNOC be permitted to set-off its foregoing mentioned tax liability of ₱304,419,396.83 against the tax refund/credit claims of the National Power Corporation (NPC) for specific taxes on fuel oil sold to NPC totaling ₱335,259,450.21, which tax refunds/credits are actually receivable accounts of our Company from NPC.[76]

PNOC reiterated the offer in its letter to the BIR, dated 14 October 1986.[77] The BIR, in its letters to PNOC, dated 8 October 1986[78] and 11 November 1986,[79] consistently denied PNOC's offer because the claim for tax refund/credit of NAPOCOR was still under process, so that the offer to set-off such claim against PNOC's tax liability was premature.

Furthermore, E.O. No. 44 does not contemplate compromise payment by set-off of a tax liability against a claim for tax refund/credit. Compromise under E.O. No. 44 may be availed of only in the following circumstances:

> SEC. 3. **Who may avail**. – Any person, natural or juridical, may settle thru a compromise any delinquent account or disputed assessment which has been due as of December 31, 1985, **by paying an amount equal to thirty percent (30%) of the basic tax assessed.**
>
> …
>
> SEC. 6. **Mode of Payment**. – Upon acceptance of the proposed compromise, the amount offered as compromise in complete settlement of the delinquent account **shall be paid immediately in cash or manager's certified check.**
>
> Deferred or staggered payments of compromise amounts over ₱50,000 may be considered on a case to case basis in accordance with the extant regulations of the Bureau upon approval of the Commissioner of Internal Revenue, his Deputy or Assistant as delineated in their respective jurisdictions.
>
> If the Compromise amount is not paid as required herein, the compromise agreement is automatically nullified and the delinquent account reverted to the original amount plus the statutory increments, which shall be collected thru the summary and/or judicial processes provided by law.

E.O. No. 44 is not for the benefit of the taxpayer alone, who can extinguish his tax liability by paying the compromise amount equivalent to 30% of the basic tax. It also benefits the Government by making collection of delinquent accounts and disputed assessments simpler, easier, and faster. Payment of the compromise amount must be made immediately, in cash or in manager's check. Although deferred or staggered payments may be allowed on a case-

to-case basis, the mode of payment remains unchanged, and must still be made either in cash or in manager's check.

PNOC's offer to set-off was obviously made to avoid actual cash-out by the company. The offer defeated the purpose of E.O. No. 44 because it would not only delay collection, but more importantly, it would not guarantee collection. *First of all*, BIR's collection was contingent on whether the claim for tax refund/credit of NAPOCOR would be subsequently granted. *Second*, collection could not be made immediately and would have to wait until the resolution of the claim for tax refund/credit of NAPOCOR. *Third*, there is no proof, other than the bare allegation of PNOC, that NAPOCOR's claim for tax refund/credit is an account receivable of PNOC. A possible dispute between NAPOCOR and PNOC as to the proceeds of the tax refund/credit would only delay collection by the BIR even further.

It was only in its letter, dated 09 June 1987, that PNOC actually offered to compromise its tax liability in accordance with the terms and circumstances prescribed by E.O. No. 44 and its implementing rules and regulations, by stating that:

> Consequently, we reiterate our previous request for compromise under E.O. No. 44, and convey our preparedness to settle the subject tax assessment liability by payment of the compromise amount of ₱91,003,129.89, representing thirty percent (30%) of the basic tax assessment of ₱303,343,766.29, in accordance with E.O. No. 44 and its implementing BIR Revenue Memorandum Order No. 39-86.[80]

PNOC claimed in the same letter that it had previously requested for a compromise under the terms of E.O. No. 44, but this Court could not find evidence of such previous request. There are stark and substantial differences in the terms of PNOC's offer to compromise in its earlier letters, dated 25 September 1986 and 14 October 1986 (set-off of the entire amount of its tax liability against the claim for tax refund/credit of NAPOCOR), to those in its letter, dated 09 June 1987 (payment of the compromise amount representing 30% of the basic tax assessed against it), making it difficult for this Court to accept that the letter of 09 June 1987 merely reiterated PNOC's offer to compromise in its earlier letters.

This Court likewise cannot give credence to PNOC's allegation that beginning 25 September 1986, the date of its first letter to the BIR, there were continuing negotiations between PNOC and BIR that culminated in the compromise agreement on 22 June 1987. Aside from the exchange of letters recounted in the preceding paragraphs, both PNOC and PNB failed to present any other proof of the supposed negotiations.

After the BIR denied the second offer of PNOC to set-off its tax liability against the claim for tax refund/credit of NAPOCOR in a letter, dated 11 November 1986, there is no other evidence of subsequent communication between PNOC and the BIR. It was only after almost seven months, or on 09 June 1987, that PNOC again wrote a letter to the BIR, this time offering to pay the compromise amount of 30% of the basic tax assessed against. This letter was already filed beyond 31 March 1987, after the lapse of the effectivity of E.O. No. 44 and the deadline for filing applications for compromise under the said statute.

Evidence of meetings between PNOC and the BIR, or any other form of communication, wherein the parties presented their offer and counter-offer to the other, would have been very valuable in explaining and supporting BIR Commissioner Tan's decision to accept PNOC's third offer to compromise after denying the previous two. The absence of such evidence herein negates PNOC's claim of actual negotiations with the BIR.

Therefore, even assuming arguendo that the tax liabilities of PNOC and PNB qualify as delinquent accounts or disputed assessments as of 31 December 1985, the application for compromise filed by PNOC on 09 June 1987, and accepted by then BIR Commissioner Tan on 22 June 1987, was still filed way beyond 31 March 1987, the expiration date of the effectivity of E.O. No. 44 and the deadline for filing of applications for compromise under RMO No. 39-86.

> *D. The BIR Commissioner's discretionary authority to enter into a compromise agreement is not absolute and the CTA may inquire into allegations of abuse thereof.*

The foregoing discussion supports the CTA's conclusion that the compromise agreement between PNOC and the BIR was indeed without legal basis. Despite this lack of legal support for the execution of the said compromise agreement, PNB argues that the CTA still had no jurisdiction to review and set aside the compromise agreement. It contends that the authority to compromise is purely discretionary on the BIR Commissioner and the courts cannot interfere with his exercise thereof.

It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with this Court having the last say on the matter.[81]

The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of "grave abuse of discretion and/or whimsical exercise of

jurisdiction."[82] The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.

The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency.[83] In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246 of the NIRC of 1977, as amended, can only be exercised under certain circumstances specifically identified in said statutes. The BIR Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them.[84]

Petitioners PNOC and PNB both contend that BIR Commissioner Tan merely exercised his authority to enter into a compromise specially granted by E.O. No. 44. Since this Court has already made a determination that the compromise agreement did not qualify under E.O. No. 44, BIR Commissioner Tan's decision to agree to the compromise should have been reviewed in the light of the general authority granted to the BIR Commissioner to compromise taxes under Section 246 of the NIRC of 1977, as amended. Then again, petitioners PNOC and PNB failed to allege, much less present evidence, that BIR Commissioner Tan acted in accordance with Section 246 of the NIRC of 1977, as amended, when he entered into the compromise agreement with PNOC.

E. The CTA may set aside a compromise agreement that is contrary to law and public policy.

PNB also asserts that the CTA had no jurisdiction to set aside a compromise agreement entered into in good faith. It relies on the decision of this Court in Republic v. Sandiganbayan[85] that a compromise agreement cannot be set aside merely because it is too one-sided. A compromise agreement should be respected by the courts as the res judicata between the parties thereto.

This Court, though, finds that there are substantial differences in the factual background of Republic v. Sandiganbayan and the present case.

The compromise agreement executed between the Presidential Commission on Good Government (PCGG) and Roberto S. Benedicto in *Republic v. Sandiganbayan* was judicially approved by the Sandiganbayan. The Sandiganbayan had ample opportunity to examine the validity of the compromise agreement since two years elapsed from the time the agreement was executed up to the time it was judicially approved. This Court even stated in the said case that, "We are not dealing with the usual compromise agreement perfunctorily submitted to a court and approved as a matter of course. The PCGG-Benedicto agreement was thoroughly and, at times, disputatiously discussed before the respondent court. There could be no deception or misrepresentation foisted on either the PCGG or the Sandiganbayan."[86]

In addition, the new PCGG Chairman originally prayed for the re-negotiation of the compromise agreement so that it could be more just, fair, and equitable, an action considered by this Court as an implied admission that the agreement was not contrary to law, public policy or morals nor was there any circumstance which had vitiated consent.[87]

The above-mentioned circumstances strongly supported the validity of the compromise agreement in Republic v. Sandiganbayan, which was why this Court refused to set it aside. Unfortunately for the petitioners in the present case, the same cannot be said herein.

The Court of Appeals, in upholding the jurisdiction of the CTA to set aside the compromise agreement, ruled that:

> We are unable to accept petitioner's submissions. Its formulation of the issues on CIR and CTA's lack of jurisdiction to disturb a compromise agreement presupposes a compromise agreement validly entered into by the CIR and not, when as in this case, it was indubitably shown that the supposed compromise agreement is without legal support. In case of arbitrary or capricious exercise by the Commissioner or if the proceedings were fatally defective, the compromise can be attacked and reversed through the judicial process (*Meralco Securities Corporation v. Savellano, 117 SCRA 805, 812 [1982]; Sarah E. Ramsay, et. al. v. U.S.* 21 Ct. C1 443, aff'd 120 U.S. 214, 30 L. Ed. 582; Tyson v. U.S., 39 F. Supp. 135 cited in page 18 of decision) ….[88]

Although the general rule is that compromises are to be favored, and that compromises entered into in good faith cannot be set aside,[89] this rule is not without qualification. A court may still reject a compromise or settlement when it is repugnant to law, morals, good customs, public order, or public policy.[90]

The compromise agreement between the BIR and PNOC was contrary to law having been entered into by BIR Commissioner Tan in excess or in abuse of the authority granted to him by legislation. E.O. No. 44 and the NIRC of 1977, as amended, had identified the situations wherein the BIR Commissioner may compromise tax liabilities, and none of these situations existed in this case.

The compromise, moreover, was contrary to public policy. The primary duty of the BIR is to collect taxes, since taxes are the lifeblood of the Government and their prompt and certain availability are imperious needs.[91] In the present case, however, BIR Commissioner Tan, by entering into the compromise agreement that was bereft of any legal basis, would have caused the Government to lose almost ₱300 million in tax revenues and would have deprived the Government of much needed monetary resources.

Allegations of good faith and previous execution of the terms of the compromise agreement on the part of PNOC would not be enough for this Court to disregard the demands of law and public policy. Compromise may be the favored method to settle disputes, but when it involves taxes, it may be subject to closer scrutiny by the courts. A compromise agreement involving taxes would affect not just the taxpayer and the BIR, but also the whole nation, the ultimate beneficiary of the tax revenues collected.

F. The Government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents.

The new BIR Commissioner, Commissioner Ong, had acted well within his powers when he set aside the compromise agreement, dated 22 June 1987, after finding that the said compromise agreement was without legal basis. When he took over from his predecessor, there was still a pending motion for reconsideration of the said compromise agreement, filed by private respondent Savellano on 24 March 1988. To resolve the said motion, he reviewed the compromise agreement and, thereafter, came upon the conclusion that it did not comply with E.O. No. 44 and its implementing rules and regulations.

It had been declared by this Court in *Hilado v. Collector of Internal Revenue, et al.*,[92] that an administrative officer, such as the BIR Commissioner, may revoke, repeal or abrogate the acts or previous rulings of his predecessor in office. The construction of a statute by those administering it is not binding on their successors if, thereafter, the latter becomes satisfied that a different construction should be given.

It is evident in this case that the new BIR Commissioner, Commissioner Ong, construed E.O. No. 44 and its implementing rules and regulations differently from that of his predecessor, former Commissioner Tan, which led to Commissioner Ong's revocation of the BIR approval of the compromise agreement, dated 22 June 1987. Such a revocation was only proper considering that the former BIR Commissioner's decision to approve the said compromise agreement was based on the erroneous construction of the law (*i.e.*, E.O. No. 44 and its implementing rules and regulations) and should not give rise to any vested right on PNOC.[93]

Furthermore, approval of the compromise agreement and acceptance of the compromise payment by his predecessor cannot estop BIR Commissioner Ong from setting aside the compromise agreement, dated 22 June 1987, for lack of legal basis; and from demanding payment of the deficiency withholding tax from PNB. As a general rule, the Government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents[94] because:

> . . . Upon taxation depends the Government ability to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people, in the same manner as private persons may be made to suffer individually on account of his own negligence, the presumption being that they take good care of their personal affairs. This should not hold true to government officials with respect to matters not of their own personal concern. This is the philosophy behind the government's exception, as a general rule, from the operation of the principle of estoppel. (*Republic vs. Caballero*, L-27437, September 30, 1977, 79 SCRA 177; *Manila Lodge No. 761, Benevolent and Protective Order of the Elks, Inc. vs. Court of Appeals*, L-41001, September 30, 1976, 73 SCRA 162; *Sy vs. Central Bank of the Philippines*, L-41480, April 30, 1976, 70 SCRA 571; *Balmaceda vs. Corominas & Co., Inc.*, 66 SCRA 553; *Auyong Hian vs. Court of Tax Appeals*, 59 SCRA 110; *Republic vs. Philippine Rabbit Bus Lines, Inc.*, 66 SCRA 553; *Republic vs. Philippine Long Distance Telephone Company*, L-18841, January 27, 1969, 26 SCRA 620; *Zamora vs. Court of Tax Appeals*, L-23272, November 26, 1970, 36 SCRA 77; *E. Rodriguez, Inc. vs. Collector of Internal Revenue*, L-23041, July 31, 1969, 28 SCRA 119).[95]

III

Finality of the Tax Assessment

A. The issue on whether the BIR complied with the notice requirements under RR No. 12-85 is raised for the first time on appeal and should not be given due course.

PNB, in another effort to block the collection of the deficiency withholding tax, this time raises doubts as to the validity of the deficiency withholding tax assessment issued against it on 16 January 1991. It submits that the BIR failed to comply with the notice requirements set forth in RR No. 12-85.[96]

Whether or not the BIR complied with the notice requirements of RR No. 12-85 is a new issue raised by PNB only before this Court. Such a question has not been ventilated before the lower courts. For an appellate tribunal to consider a legal question, it should have been raised in the court below.[97] If raised earlier, the matter would have been seriously delved into by the CTA and the Court of Appeals.[98]

B. The assessment against PNB had become final and unappealable, and therefore, enforceable.

The CTA and the Court of Appeals declared as final and unappealable, and thus, enforceable, the assessment against PNB, dated 16 January 1991, since PNB failed to protest said assessment within the 30-day prescribed period. This Court, though, finds that the significant BIR assessment, as far as this case is concerned, should be the one issued by the BIR against PNB on 08 October 1986.

The BIR issued on 08 October 1986 an assessment against PNB for its withholding tax liability on the interest earnings and/or yields from PNOC's money placements with the bank. It had 30 days from receipt to protest the BIR's assessment.[99] PNB, however, did not take any action as to the said assessment so that upon the lapse of the period to protest, the withholding tax assessment against it, dated 8 October 1986, became final and unappealable, and could no longer be disputed.[100] The courts may therefore order the enforcement of this assessment.

It is the enforcement of this BIR assessment against PNB, dated 08 October 1986, that is in issue in the instant case. If the compromise agreement is valid, it would effectively bar the BIR from enforcing the assessment and collecting the assessed tax; on the other hand, if the compromise agreement is void, then the courts can order the BIR to enforce the assessment and collect the assessed tax.

As has been previously discussed by this Court, the BIR demand letter, dated 16 January 1991, is not a new assessment against PNB. It only demanded from PNB the payment of the balance of the withholding tax assessed against it on 08 October 1986. The same demand letter also has no substantial effect or impact on the resolution of the present case. It is already unnecessary and superfluous, having been issued by the BIR when CTA Case No. 4249 was already pending before the CTA. At best, the demand letter, dated 16 January 1991, constitute a useful reference for the courts in computing the balance of PNB's tax liability, after applying as partial payment thereon the amount previously received by the BIR from PNOC pursuant to the compromise agreement.

IV

Prescription

A. The defense of prescription was never raised by petitioners PNOC and PNB, and should be considered waived.

The dissenting opinion takes the position that the right of the BIR to assess and collect income tax on the interest earnings and/or yields from PNOC's money placements with PNB, particularly for taxable year 1985, had already prescribed, based on Section 268 of the NIRC of 1977, as amended.

Section 268 of the NIRC of 1977, as amended, provides a three-year period of limitation for the assessment and collection of internal revenue taxes, which begins to run after the last day prescribed for filing of the return.[101]

The dissenting opinion points out that more than four years have elapsed from 25 January 1986 (the last day prescribed by law for PNB to file its withholding tax return for the fourth quarter of 1985) to 16 January 1991 (the date when the alleged final assessment of PNB's tax liability was issued).

The issue of prescription, however, was brought up only in the dissenting opinion and was never raised by PNOC and PNB in the proceedings before the BIR nor in any of their pleadings submitted to the CTA and the Court of Appeals.

Section 1, Rule 9 of the Rules of Civil Procedure lays down the rule on defenses and objections not pleaded, and reads:

> **SECTION 1**. *Defenses and objections not pleaded*. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the parties for the same cause, or that the action is barred by prior judgment or by the statute of limitations, the court shall dismiss the claim.

The general rule enunciated in the above-quoted provision governs the present case, that is, the defense of prescription, not pleaded in a motion to dismiss or in the answer, is deemed waived. The exception in same provision cannot be applied herein because the pleadings and the evidence on record do not sufficiently show that the action is barred by prescription.

It has been consistently held in earlier tax cases that the defense of prescription of the period for the assessment and collection of tax liabilities shall be deemed waived when such defense was not properly pleaded and the facts alleged and evidences submitted by the parties were not sufficient to support a finding by this Court on the matter.[102] In *Querol v. Collector of Internal Revenue*,[103] this Court pronounced that prescription, being a matter of defense, imposes the burden on the taxpayer to prove that the full period of the limitation has expired; and this requires him to positively establish the date when the period started running and when the same was fully accomplished.

In making its conclusion that the assessment and collection in this case had prescribed, the dissenting opinion took liberties to assume the following facts even in the absence of allegations and evidences to the effect that: (1) PNB filed returns for its withholding tax obligations for taxable year 1985; (2) PNB reported in the said returns the interest earnings of PNOC's money placements with the bank; and (3) that the returns were filed on or before the prescribed date, which was 25 January 1986.

It is not safe to adopt the first and second assumptions in this case considering that Section 269 of the NIRC of 1977, as amended, provides for a different period of limitation for assessment and collection of taxes in case of false or fraudulent return or for failure to file a return. In such cases, the BIR is given 10 years after discovery of the falsity, fraud, or omission within which to make an assessment.[104]

It is also not safe to accept the third assumption since there can be a possibility that PNB filed the withholding tax return later than the prescribed date, in which case, following the dictates of Section 268 of the NIRC of 1977, as amended, the three-year prescriptive period shall be counted from the date the return was actually filed.[105]

PNB's withholding tax returns for taxable year 1985, duly received by the BIR, would have been the best evidence to prove actual filing, the date of filing and the contents thereof. These facts are relevant in determining which prescriptive period should apply, and when such prescriptive period should begin to run and when it had lapsed. Yet, the pleadings did not refer to any return, and no return was made part of the records of the present case.

This Court could not make a proper ruling on the matter of prescription on the mere basis of assumptions; such an issue should have been properly raised, argued, and supported by evidences submitted by the parties themselves before the BIR and the courts below.

> *B. Granting that this Court can take cognizance of the defense of prescription, this Court finds that the assessment of the withholding tax liability against PNOC and collection of the tax assessed were done within the prescriptive period.*

Assuming, for the sake of argument, that this Court can give due course to the defense of prescription, it finds that the assessment against PNB for its withholding tax liability for taxable year 1985 and the collection of the tax assessed therein were accomplished within the prescribed periods for assessment and collection under the NIRC of 1977, as amended.

If this Court adopts the assumption made by the dissenting opinion that PNB filed its withholding tax return for the last quarter of 1985 on 25 January 1986, then the BIR had until 24 January 1989 to assess PNB. The original assessment against PNB was issued as early as 08 October 1986, well-within the three-year prescriptive period for making the assessment as prescribed by the following provisions of the NIRC of 1977, as amended:

> SEC. 268. *Period of limitation upon assessment and collection*. – Except as provided in the succeeding section, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period…
>
> SEC. 269. *Exceptions as to period of limitation of assessment and collection of taxes.* –
>
> …
>
> (c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

Sections 268 and 269(c) of the NIRC of 1977, as amended, should be read in conjunction with one another. Section 268 requires that assessment be made within three years from the last day prescribed by law for the filing of the return. Section 269(c), on the other hand, provides that when an assessment is issued within the prescribed period provided in Section 268, the BIR has three years, counted from the date of the assessment, to collect the tax assessed either by distraint, levy or court action. Therefore, when an assessment is timely issued in accordance with Section 268, the BIR is given another three-year period, under Section 269(c), within which to collect the tax assessed, reckoned from the date of the assessment.

In the case of PNB, an assessment was issued against it by the BIR on 08 October 1986, so that the BIR had until 07 October 1989 to enforce it and to collect the tax assessed. The filing, however, by private respondent Savellano of his Amended Petition for Review before the CTA on 02 July 1988 already constituted a judicial action for collection of the tax assessed which stops the running of the three-year prescriptive period for collection thereof.

A judicial action for the collection of a tax may be initiated by the filing of a complaint with the proper regular trial court; or where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.[106]

The present case is unique, however, because the Petition for Review was filed by private respondent Savellano, the informer, against the BIR, PNOC, and PNB. The BIR, the collecting government agency; PNOC, the taxpayer; and PNB, the withholding agent, initially found themselves on the same side. The prayer in the Amended Petition for Review of private respondent Savellano reads:

> WHEREFORE, in view of the foregoing, petitioner respectfully prays that the compromise agreement of June 22, 1987 be reviewed and declared null and void, and that this Court directs:
>
> a) respondent Commissioner to enforce and collect and respondents PNB and/or PNOC to pay in a joint and several capacity, the total tax liability of ₱387,987,785.73, plus interests from 31 October 1986; and
>
> b) respondent Commissioner to pay unto petitioner, as informer's reward, 15% of the tax liability collected under clause (a) hereof.
>
> Other equitable reliefs under the premises are likewise prayed for.[107] (Underscoring ours.)

Private respondent Savellano, in his Amended Petition for Review in CTA Case No. 4249, prayed for (1) the CTA to direct the BIR Commissioner to enforce and collect the tax, and (2) PNB and/or PNOC to pay the tax – making CTA Case No. 4249 a collection case. That the Amended Petition for Review was filed by the informer and not the taxpayer; and that the prayer for the enforcement of the tax assessment and payment of the tax was also made by the informer, not the BIR, should not affect the nature of the case as a judicial action for collection. In case the CTA grants the Petition and the prayer therein, as what has happened in the present case, the ultimate result would be the collection of the tax assessed. Consequently, upon the filing of the Amended Petition for Review by private respondent Savellano, judicial action for collection of the tax had been initiated and the running of the prescriptive period for collection of the said tax was terminated.

Supposing that CTA Case No. 4249 is not a collection case which stops the running of the prescriptive period for the collection of the tax, CTA Case No. 4249, at the very least, suspends the running of the said prescriptive period. Under Section 271 of the NIRC of 1977, as amended, the running of the prescriptive period to collect deficiency taxes shall be suspended for the period during which the BIR Commissioner is prohibited from beginning a distraint or levy or instituting a proceeding in court, and for 60 days thereafter.[108] Just as in the cases of *Republic v. Ker & Co., Ltd.*[109] and *Protector's Services, Inc. v. Court of Appeals*,[110] this Court declares herein that the pendency of the present case before the CTA, the Court of Appeals and this Court, legally prevents the BIR Commissioner from instituting an action for collection of the same tax liabilities assessed against PNOC and PNB in the CTA or the regular trial courts. To rule otherwise would be to violate the judicial policy of avoiding multiplicity of suits and the rule on *lis pendens*.

Once again, that CTA Case No. 4249 was initiated by private respondent Savellano, the informer, instead of PNOC, the taxpayer, or PNB, the withholding agent, would not prevent the suspension of the running of the prescriptive period for collection of the tax. What is controlling herein is the fact that the BIR Commissioner cannot file a judicial action in any other court for the collection of the tax because such a case would necessarily involve the same parties and involve the same issues already being litigated before the CTA in CTA Case No. 4249. The three-year prescriptive period for collection of the tax shall commence to run only after the promulgation of the decision of this Court in which the issues of the present case are resolved with finality.

Whether the filing of the Amended Petition for Review by private respondent Savellano entirely stops or merely suspends the running of the prescriptive period for collection of the tax, it had been premature for the BIR Commissioner to issue a writ of garnishment against PNB on 12 August 1991 and for the Central Bank of the Philippines to debit the account of PNB on 02 September 1992 pursuant to the said writ, because the case was by then, pending review by the Court of Appeals. However, since this Court already finds that the compromise agreement is without force and effect and hereby orders the enforcement of the assessment against PNB, then, any issue or controversy arising from the premature garnishment of PNB's account and collection of the tax by the BIR has become moot and academic at this point.

V

Additional Informer's Reward

Private respondent Savellano is entitled to additional informer's reward since the BIR had already collected the full amount of the tax assessment against PNB.

PNOC insists that private respondent Savellano is not entitled to additional informer's reward because there was no voluntary payment of the withholding tax liability. PNOC, however, fails to state any legal basis for its argument.

Section 316(1) of the NIRC of 1977, as amended, granted a reward to an informer equivalent to 15% of the revenues, surcharges, or fees recovered, plus, any fine or penalty imposed and collected.[111] The provision was clear and uncomplicated – an informer was entitled to a reward of 15% of the total amount actually recovered or collected by the BIR based on his information. The provision did not make any distinction as to the manner the tax liability was collected – whether it was through voluntary payment by the taxpayer or through garnishment of the taxpayer's property. Applicable herein is another well-known maxim in statutory construction – *Ubi lex non distinguit nec nos distinguere debemos* – when the law does not distinguish, we should not distinguish.[112]

Pursuant to the writ of garnishment issued by the BIR, the Central Bank issued a debit advice against the demand deposit account of PNB with the Central Bank for the amount of ₱294,958,450.73, and credited the same amount to the demand deposit account of the Treasurer of the Republic of the Philippines. The Treasurer of the Republic, in turn, already issued a journal voucher transferring ₱294,958,450.73 to the account of the BIR.

Since the BIR had already collected ₱294,958,450.73 from PNB through the execution of the writ of garnishment over PNB's deposit with the Central Bank, then private respondent Savellano should be awarded 15% thereof as reward since the said collection could still be traced to the information he had given.

WHEREFORE, in view of the foregoing, the Petitions of PNOC and PNB in G.R. No. 109976 and G.R. No. 112800, respectively, are hereby DENIED. This Court AFFIRMS the assailed Decisions of the Court of Appeals in CA-G.R. SP No. 29583 and CA-G.R. SP No. 29526, which affirmed the decision of the CTA in CTA Case No. 4249, with modifications, to wit:

> (1) The compromise agreement between PNOC and the BIR, dated 22 June 1987, is declared void for being contrary to law and public policy, and is without force and effect;
>
> (2)Paragraph 2 of RMO No. 39-86 remains a valid provision of the regulation;
>
> (3)The withholding tax assessment against PNB, dated 08 October 1986, had become final and unappealable. The BIR Commissioner is ordered to enforce the said assessment and collect the amount of ₱294,958,450.73, the balance of tax assessed after crediting the previous payment made by PNOC pursuant to the compromise agreement, dated 22 June 1987; and
>
> (4) Private respondent Savellano shall be paid the remainder of his informer's reward, equivalent to 15% of the deficiency withholding tax ordered collected herein, or ₱ 44,243,767.61.

SO ORDERED.

Quisumbing, Sandoval-Gutierrez, Austria-Martinez, Callejo, Sr., and *Garcia, JJ.,* concur.
Davide, Jr., C.J., Corona, and *Carpio-Morales,* joins *J*. Carpio in his dissenting opinion.
Puno, and Panganiban, J., concurs with the majority and the separate opinion of *J*. Tinga.
Ynares-Santiago, J., no part.
Carpio, *J*., see dissenting opinion.
Azcuna, J., no part—was PNB Chairman in 1991.
Tinga, J., see separate concurring opinion.

DISSENTING OPINION

CARPIO, *J.*:

I dissent from the majority opinion penned by Justice Minita V. Chico-Nazario.

First, the withholding tax liability of Philippine National Oil Company ("PNOC") is a delinquent account that falls within the coverage of Executive Order No. 44 ("EO No. 44"), the tax compromise law.

Second, PNOC filed its application for tax compromise under EO No. 44 within the period prescribed by EO No. 44 and its implementing regulations.

Third, the tax compromise agreement made by PNOC with the Bureau of Internal Revenue ("BIR") is now *res judicata*. The parties to the compromise agreement have fully implemented the agreement in good faith.