

EN BANC

**G.R. No. 238846 – SHELL PHILIPPINES EXPLORATION B.V. and CHEVRON MALAMPAYA LLC, Petitioners, v. COMMISSION ON AUDIT, Respondent.**

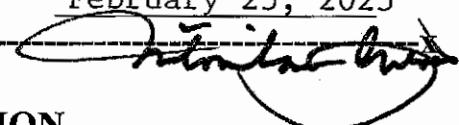
**G.R. No. 238852 – PNOC EXPLORATION CORPORATION, Petitioner, v. COMMISSION ON AUDIT, Respondent.**

**G.R. No. 238862 – THELMA M. CERDEÑA and NORA A. TUAZON, Petitioners, v. COMMISSION ON AUDIT, Respondent.**

Promulgated:

February 25, 2025

X-----



**DISSENTING OPINION**

**LEONEN, J.:**

I dissent.

**I**

Presidential Decree No. 87,<sup>1</sup> the governing law on indigenous oil exploration, development and production, does not explicitly state that the government's share in petroleum revenues includes income taxes. Section 18 of Presidential Decree No. 87, the supposed statutory basis of Section 6.3 of the Service Contract, states:

SEC. 18. *Functions of Petroleum Board.*<sup>2</sup> — In accordance with the provisions and objectives of this Act, the Petroleum Board shall:

....

<sup>1</sup> Presidential Decree No. 87 (1972), The Oil Exploration and Development Act of 1972.

<sup>2</sup> On March 22, 1976, the Petroleum Board was abolished and its powers and functions under Presidential Decree No. 87 were transferred to the Energy Development Board created under Presidential Decree No. 910. A year later or on October 6, 1977, by virtue of Presidential Decree No. 1206, the Energy Development Board was abolished and said powers and functions were transferred to the Bureau of Energy Development of the Department of Energy. In June 8, 1978, Presidential Decree No. 1459 authorized the Secretary of Energy, upon the approval of the President, to enter into or renegotiate service contracts, subject to the following conditions:

- (a) The share of the Government, including all taxes, shall not be less than sixty per cent of the difference between the gross income and the sum of operating expenses and such allowances as the Secretary of Energy may deem proper to grant;
- (b) The service contractor must be technically competent and financially capable to undertake the petroleum operations required in the contract; and
- (c) The Secretary of Finance shall be consulted on all matters involving revenue.



(b) Enter into contracts herein authorized with such terms and conditions as may be appropriate under the circumstances including the grant of special allowance: *Provided, however*, That no depletion allowance shall be granted: *Provided, further*, That except as provided in Sections twenty-six and twenty-seven hereof, no contract in favor of one contractor and its affiliates shall cover less than fifty thousand nor more than seven hundred and fifty thousand hectares for on-shore areas, or less than eighty thousand nor more than one million five hundred thousand hectares for off-shore areas: *Provided, finally*, That in no case shall the annual net revenue or share of the Government, including all taxes paid by or on behalf of the Contractor, be less than sixty per cent of the difference between the gross income and the sum of operating expenses and Filipino participation incentive;

(c) Provide for the manner and form of the income tax payment, the reimbursement of operating expenses, the payment of service fee, and payment of Filipino participation incentive allowance, if any, in the service contract[.] (Emphasis supplied)

The phrase “including all taxes paid by or on behalf of the Contractor” means “additionally” or “in addition to,” such that both the annual net revenue or government’s share in petroleum production *and* all taxes paid would be taken into account in meeting the minimum threshold of 60%. It comes from an understanding that the “taxes paid” are *part of the larger or broader group of revenues* to the government, and not necessarily of the “annual net revenue or share of the government in petroleum production.” Otherwise, had the latter been the intent, a clearer phrasing should have been used such as “*which includes*,” “*inclusive of*,” or any language clearly and unequivocally indicative of such intent.

This is the proper interpretation if we look at the immediate context of the provision stating the function of the Petroleum Board (now Department of Energy) to “enter into contracts. . . with such terms and conditions as may be appropriate” and “provide for the manner and form of the income tax payment. . .” and of Presidential Decree No. 87 as a whole. The purpose and objective sought to be attained and particularly those provisions outlining the privileges of contractors<sup>3</sup> and providing for their income tax liability.

<sup>3</sup> Presidential Decree No. 87 (1972), sec. 12 provides:

SEC. 12. *Privileges of contractor.* — The provisions of any law to the contrary notwithstanding, a contract executed under this Act may provide that the Contractor shall have the following privileges:

(a) Exemption from all taxes except income tax.

(b) Exemption from payment of tariff duties and compensating tax on the importation of machinery and equipment, and spare parts and all materials required for petroleum operations subject to the conditions that said machinery, equipment, spare parts and materials of comparable price and quality are not manufactured domestically; and directly and actually needed and will be used exclusively by the Contractor in its operations or in operations for it by a subcontractor are covered by shipping documents in the name of the Contractor to whom the shipment will be delivered direct by the customs authorities; and prior approval of the Petroleum Board was obtained by the Contractor before the importation of such machinery, equipment, spare parts and materials which approval shall not be unreasonably withheld: *Provided, however*, That the Contractor or its subcontractor may not sell, transfer or dispose of these machinery, equipment, spare parts and materials without the prior approval of the Petroleum Board and payment of taxes due the Government: *Provided, further*, That should the Contractor or its subcontractor sell, transfer or dispose of these machinery equipment, spare parts or materials without the prior consent of the Petroleum Board, it shall pay twice the amount of the tax exemption granted: *Provided, finally* That the Petroleum Board shall allow and approve the sale, transfer, or disposition of the said items

*In Philippine International Trading Corp. v. Commission on Audit:*<sup>4</sup>

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.<sup>5</sup> (Emphasis in the original, citations omitted)

The government's share in petroleum production is distinct from income tax, although ultimately, both are revenues of the government. To add, the government's share in the proceeds of the Malampaya Natural Gas Project springs from the State's ownership of the natural resource discovered, produced, and sold. On the other hand, the income tax payment flows from the Service Contractors' derivation of income from activities within the Philippines' territorial jurisdiction. It is a tax on the privilege of earning income.<sup>6</sup>

---

without tax if made (1) to another contractor; (2) for reasons of technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the contract;

(c) Exemption upon approval by the Petroleum Board from laws, regulations and/or ordinances restricting the (1) construction, installation, and operation of power plant for the exclusive use of the Contractor if no local enterprise can supply within a reasonable period and at reasonable cost the power needed by the Contractor in its petroleum operations, (2) exportation of machinery and equipment which were imported solely for its petroleum operation when no longer needed therefor;

(d) Exemption from publication requirements under Republic Act Numbered Five thousand four hundred fifty-five; and the provisions of Republic Act Numbered Sixty-one hundred and seventy-three with respect to the exploration, production, exportation or sale or disposition of crude oil discovered and produced in the Philippines;

(e) Exportation of petroleum subject to the prior filing *pro-rata* of domestic needs as elsewhere provided in this Act;

(f) Entry, upon the sole approval of the Petroleum Board which shall not be unreasonably withheld, of alien technical and specialized personnel (including the immediate members of their families), who may exercise their professions solely for the operations of the contractor as prescribed in its contract with the Government under this Act: *Provided*, That if the employment or connection of any such alien with contractor ceases, the applicable laws and regulations on immigration shall apply to him and his immediate family: *Provided, further*, That Filipinos shall be given preference to positions for which they have adequate training: *And provided, finally*, That the Contractor shall adopt and implement a training program for Filipinos along technical or specialized lines, which program shall be reported to the Petroleum Board;

(g) Rights and obligations in any contract concluded pursuant to this Act shall be deemed as essential considerations for the conclusion thereof and shall not be unilaterally changed or impaired; and

(h) The privileges and benefits granted to a contractor under the provisions of this Act together with any applicable obligations shall likewise be made available to concessionaires under the Petroleum Act of 1949 and their authorized contractors and/or service operators, whether local or foreign, if they so elect.

<sup>4</sup> 635 Phil. 447 (2010) [Per J. Perez, *En Banc*].

<sup>5</sup> *Id.* at 454.

<sup>6</sup> *Maynilad Water Services, Inc. v. National Water and Resources Board*, G.R. Nos. 181764, 187380, 207444, etc., December 7, 2021 [Per J. Leonen, *En Banc*].

Again, Section 18(b) of Presidential Decree No. 87 should be construed to mean only that the government's share *and* all taxes paid by or on behalf of the contractor should not be less than 60%.

A contrary interpretation such as that being pressed upon this Court — that income taxes are included in the government's share — would run counter to Presidential Decree No. 87's policy of maximum revenues to the government and just return to the contractors from production of indigenous petroleum. *More importantly, it amounts to an income tax exemption.* To justify such result, it is imperative that the language employed be of the clearest and most satisfactory character. However, the clause relied upon in Section 18(b) of Presidential Decree No. 87 is indefinable.

## II

Tax exemptions are strictly construed and are never presumed.<sup>7</sup> They must be clearly and categorically expressed and cannot be established by implications.<sup>8</sup> The reason for this is explained in Associate Justice Isagani Cruz's Dissenting Opinion in *Maceda v. Macaraig*<sup>9</sup>:

A tax exemption represents a loss of revenue to the State and must therefore not be lightly granted or inferred. When claimed, it must be strictly construed against the taxpayer, who must prove that he comes under the exemption rather than [the] rule that every one [sic] must contribute his just share in the maintenance of the government. If granted, tax exemption is strictly construed against the taxpayer.<sup>10</sup>

Section 6.3 of the Service Contract, which states that "*The OFFICE OF ENERGY AFFAIRS shall assume and pay on behalf of CONTRACTOR and its parent company, on the first transaction in each instance where the tax is imposed, all income taxes payable to the Republic of the Philippines based on income and profits . . .*"<sup>11</sup> is not supported by law, particularly Section 18(b) of Presidential Decree No. 87.

It is tantamount to an income tax exemption and goes against the specific provisions under Presidential Decree No. 87, which allows exemption by the contractor from all taxes *except* income tax:

<sup>7</sup> *Luzon Stevedoring Corp. v. Court of Tax Appeals*, 246 Phil 666 (1988) [Per J. Paras, Second Division]; *Province of Abra v. Hernando*, 194 Phil 97 (1981) [Per C.J. Fernando, Second Division].

<sup>8</sup> *PLDT v. City of Davao*, 447 Phil. 571 (2003) [Per J. Mendoza, *En Banc*]; *Wonder Mechanical Engineering Corp. v. Court of Tax Appeals*, 159-A Phil. 808 (1975) [Per J. Esguerra, First Division]; *E. Rodriguez, Inc. v. Collector of Internal Revenue*, G.R. No. L-23041, 139 Phil. 354 (1969) [Per Barredo, *En Banc*].

<sup>9</sup> 274 Phil. 1060 (1991) [Per J. Gancayco, *En Banc*].

<sup>10</sup> J. Cruz's Dissenting Opinion in *Maceda v. Macaraig, Jr., etc., et al.*, 274 Phil. 1060, 1117 (1991) [Per J. Gancayco, *En Banc*].

<sup>11</sup> *Ponente*, p. 4. (Citations omitted)

SEC. 12. *Privileges of contractor.* — The provisions of any law to the contrary notwithstanding, a contract executed under this Act may provide that the Contractor shall have the following privileges:

(a) Exemption from all taxes except income tax.

....

SEC. 19. *Imposition of tax.*— The Contractor shall be liable each taxable year for Philippine income tax on income derived from its petroleum operations under its contract of service, computed as provided in Section 20, through 25.

Moreover, Section 6.3 of the Service Contract constitutes a usurpation of Congress' exclusive prerogative to grant a tax exemption. Article VI, Sec. 28 (4) of the 1987 Constitution particularly requires that "no law granting any tax exemption shall be passed without the concurrence of a majority vote of all the members of Congress."

Indeed, tax assumption may enable the foreign contractors to claim tax credit from their home jurisdiction.<sup>12</sup> In this sense, tax assumption is different from tax exemption. Nonetheless, from our standpoint, tax assumption ultimately has the effect of tax exemption:<sup>13</sup> it frees the taxpayer from the burden or charge of paying the tax.

In *Collector of Internal Revenue v. McGrath*,<sup>14</sup> it was declared that "[t]axes are not subject to agreements between the taxpayer and the tax officer, and if any such agreements are made, they cannot serve to defeat or discharge the liability that the law fixes as the full amount of the tax."

In the same vein, tax exemptions are granted by law and are not subject to contract between the Department of Energy, representing the government, and the foreign contractors. To repeat, Presidential Decree No. 87 explicitly provides the liability of the contractor for income tax, and there is nothing in the said law that clearly allows the shifting of this burden to the government.

### III

The arbitral award in an investor-state arbitration done abroad cannot stay or overturn the prior finding of the Commission on Audit (COA)—an

<sup>12</sup> *Id.* at 9–10.

<sup>13</sup> However, in *Mitsubishi Corp.-Manila Branch v. Commissioner of Internal Revenue*, 810 Phil. 16–30 (2017) [Per J. Perlas-Bernabe, First Division], the Court held that tax assumption is different from tax exemption and the constitutional provisions on tax exemptions would not apply.

<sup>14</sup> 111 Phil 222 (1961) [Per J. Labrador, *En Banc*]. In this case, the taxpayer claimed exemption from liability for the remaining amount due under the law on the ground of the earlier acceptance by the tax officer of her payment, which allegedly constituted a "full settlement of the estate tax."

independent constitutional body tasked to safeguard public funds and properties.<sup>15</sup>

Under Section 2, Article IX-D of the 1987 Constitution, the COA is vested with the following:

[T]he power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters[.]

Consequently, Section 28 of Presidential Decree No. 1445<sup>16</sup> describes the examining authority of the COA:

SECTION 28. *Examining Authority.* — The Commission shall have authority to examine books, papers, and documents filed by individuals and corporations with, and which are in the custody of, government offices in connection with government revenue collection operations, for the sole purpose of ascertaining that all funds determined by the appropriate agencies as collectible and due the government have actually been collected, except as otherwise provided in the Internal Revenue Code of 1977.

The audit jurisdiction of the COA is extensive, covering all funds and properties of the government, its agencies and instrumentalities.<sup>17</sup> Further, Section 3, Article IX-D of the 1987 Constitution categorically provides that “[n]o law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the COA.” In *Feliciano v. Commission on Audit*,<sup>18</sup> the Court held that the said provision prohibits any scheme or devise to escape the audit jurisdiction of the COA.

Nevertheless, while jurisprudence recognizes that the COA had primary jurisdiction over money claims against the government, such jurisdiction is not exclusive. In *Taisei Shimizu Joint Venture v. Commission on Audit*,<sup>19</sup> this Court held that “[o]ther tribunals/adjudicative bodies, too, may have concurrent jurisdiction with the COA over money claims against the government or in the audit of the funds of government agencies and instrumentalities.”<sup>20</sup>

<sup>15</sup> *Star Special Corporate Security Management, Inc. v. Commission on Audit*, G.R. No. 225366, September 1, 2020 [Per J. Leonen, *En Banc*].

<sup>16</sup> Presidential Decree No. 1445 (1978), Government Auditing Code of the Philippines.

<sup>17</sup> *Star Special Corporate Security Management, Inc. v. Commission on Audit*, G.R. No. 225366, September 1, 2020 [Per J. Leonen, *En Banc*].

<sup>18</sup> 464 Phil. 439 (2004) [Per J. Carpio, *En Banc*].

<sup>19</sup> 873 Phil. 323 (2020) [Per J. Lazaro-Javier, *En Banc*].

<sup>20</sup> *Id.* at 342.

In *Development Bank of the Phils. v. Commission on Audit*,<sup>21</sup> the Court held that the COA does not have the sole and exclusive power to examine and audit government banks; this power is shared with the Central Bank. Nonetheless, the Court still recognized the primacy of the government audit conducted by the COA:

[D]espite the Central Bank's concurrent jurisdiction over government banks, the COA's audit still prevails over that of the Central Bank since the COA is the constitutionally mandated auditor of government banks. And in matters falling under the second paragraph of Section 2, Article IX-D of the Constitution, the COA's jurisdiction is exclusive. Thus, the Central Bank is devoid of authority to allow or disallow expenditures of government banks since this function belongs exclusively to the COA.<sup>22</sup>

In *Taisei Shimizu Joint Venture*, the Court held that the COA's primary jurisdiction over money claims against the government does not prevent the Construction Industry Arbitration Commission's exercise of jurisdiction:

Considering that TSJV and DOTr had voluntarily invoked CIAC's jurisdiction, the power to hear and decide the present case has thereby been solely vested in the CIAC to the exclusion of COA. Being a specific law, EO No. 1008 providing for CIAC's exclusive jurisdiction prevails over PD 1445, granting the COA the general jurisdiction over money claims due from or owing to the government. For this reason alone, the COA should have stayed its hands from modifying the CIAC's final arbitral award here, let alone from claiming exclusive jurisdiction over the case.<sup>23</sup>

The Court also clarified that the COA's review power over claims for judgment awards is limited. Due to the principle of immutability of judgments, the COA could no longer reverse or modify the final and executory arbitral award rendered by the Construction Industry Arbitration Commission and "should have restricted itself to determining the source of public funds from which the final and executory arbitral award may be satisfied pursuant to the general auditing laws the COA is tasked to implement."<sup>24</sup>

Notably, in *Taisei Shimizu Joint Venture*, the dispute was first brought to the Construction Industry Arbitration Commission, which had original and exclusive jurisdiction over construction disputes under the law.

Here, the COA first acquired jurisdiction over the subject matter through the conduct of post-audit proceedings. As a necessary part of its constitutional mandate to examine and audit government entities, the COA

<sup>21</sup> 424 Phil 411 (2002) [Per J. Carpio, *En Banc*].

<sup>22</sup> *Id.* at 433-434.

<sup>23</sup> *Id.* at 344.

<sup>24</sup> *Id.* at 355.



had the power and duty to rule on questions of law,<sup>25</sup> such as whether the corporate income taxes of the contractors were included in the government's share. Arbitration proceedings subsequently conducted abroad cannot interfere with the COA's exercise of its mandated powers and duties.

However, the COA's ruling on the question may be subject to judicial review. The Constitution prescribes the remedy of *certiorari* to this Court, from decisions and resolutions of the COA,<sup>26</sup> for the limited purpose of determining whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction.

To be sure, this Court's review power may be invoked only by filing a petition for *certiorari* within the 30-day reglementary period and in the manner provided by relevant laws and the Rules of Court.<sup>27</sup> If the proper remedy is not availed of and the ruling becomes final, execution will issue as a matter of right.<sup>28</sup>

This Court generally sustains the COA's rulings, cognizant of its audit power as a check and balance mechanism under the Constitution and its expertise on the subject matter. However, should there be any taint of grave abuse of discretion, this Court may intervene to correct them. *Delos Santos v. Commission on Audit*<sup>29</sup> instructs:

At the outset, it must be emphasized that the CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.

Corollary thereto, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess

<sup>25</sup> See *Oriondo v. Commission on Audit*, G.R. No. 211293, June 4, 2019 [Per J. Leonen, *En Banc*].

<sup>26</sup> CONST. (1987), art. IX-A, sec. 7 states that "[u]nless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party[.]"

<sup>27</sup> *Oriondo v. Commission on Audit*, G.R. No. 211293, June 4, 2019 [Per J. Leonen, *En Banc*].

<sup>28</sup> J. Leonen's Separate Opinion in *Bangko Sentral ng Pilipinas v. Commission on Audit*, G.R. No. 210314, October 12, 2021 [Per J. Hernandez, *En Banc*].

<sup>29</sup> 716 Phil 322 (2013) [Per J. Perlas-Bernabe, *En Banc*].



of jurisdiction, that this Court entertains a petition questioning its rulings[.]<sup>30</sup> (Citation omitted)

Therefore, government officials and agencies are bound by the findings and conclusions of the COA, unless such findings and conclusions are modified or reversed by the Court.

The foreign arbitral tribunal's ruling upholding Sec. 6.3 of the Service Contract on the assumption by the Department of Energy of the contractors' income tax violates the Constitution; hence, it is not binding upon us. Moreover, it undermines the COA's exercise of its mandated powers, duties, and functions and by-passes the prescribed mode of review of the COA's decisions.

**ACCORDINGLY**, I vote to **DISMISS** the Petition.



MARVIC M.V.F. LEONEN  
Senior Associate Justice

---

<sup>30</sup> *Id.* at 332-333.