REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

B. NEVALGA ENTERPRISES CORP. BY: BENITO B. NEVALGA,
Petitioner,

- **versus** -

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2171
(CTA Case No. 10159)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
OCT 28 2021 2:41 p.m.

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner B. Nevalga Enterprises Corp. By: Benito B. Nevalga's (**petitioner's/B. Nevalga's**) "Motion for Reconsideration (To the Decision dated February 19, 2021)"[1] (**MR**) filed on 15 March 2021, with respondent Bureau of Internal Revenue's (**respondent's/BIR's**) "Comment/Opposition (On Petitioner's Motion for Reconsideration dated 15 March 2021)"[2] (**Comment/Opposition**) filed on 31 May 2021.

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[1] *Rollo*, pp. 126-139.
[2] Id., pp. 147-160.

Petitioner seeks the reconsideration of the Court *En Banc*'s Decision promulgated on 19 February 2021 (**assailed Decision**). The dispositive portion of which reads:

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> **WHEREFORE**, the foregoing considered, the instant Petition for Review filed on 18 November 2019 by petitioner B. Nevalga Enterprises Corp. By: Benito B. Nevalga is hereby **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated 17 September 2019 and 22 October 2019, respectively, of the Court's Third Division in CTA Case No. 10159, *B. Nevalga Enterprises Corp. By: Benito B. Nevalga v. Bureau of Internal Revenue*, are hereby **AFFIRMED**.
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> **SO ORDERED.**
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> ...

The foregoing conclusion was based on the *ratio* that petitioner's time to raise its appeal before the Court of Tax Appeals (**CTA**) had already lapsed.

In the assailed Decision, the Court *En Banc* found that more than three (3) years have lapsed from petitioner's receipt of respondent's Final Decision on Disputed Assessment[3] (**FDDA**) on 20 July 2016 before it filed an appeal before the Court's Third Division on 03 September 2019. Instead of filing the said appeal within thirty (30) days from receipt of the FDDA, petitioner opted to file an MR with then BIR Commissioner Kim S. Jacinto-Henares (**Commissioner Henares**) on 02 August 2016.

Considering the appeal period embodied in Section 228[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in relation to Revenue Regulations (**RR**) No. 12-99[5], as amended by RR No. 18-2013[6], the Court concluded that petitioner's failure to appeal the FFDA within thirty (30) days from its receipt was fatal to the perfection of its judicial protest.

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3 Annexes "A" to "A-3" attached to the Petition for Review, id., pp. 28-31.

4 SEC. 228. *Protesting of Assessment.* —

5 *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.*

6 *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*

Disagreeing with the Court *En Banc*'s findings, petitioner filed the present MR. Here, petitioner raises similar issues found in its Petition for Review. Of primary consideration among them is this Court's jurisdiction over petitioner's petition, as the resolution of which shall determine the propriety of action on the other issues raised by petitioner.

In its bid to have the assailed Decision set aside, petitioner argues that the ruling in *Fishwealth Canning Corporation v. Commissioner of Internal Revenue*[7] (**Fishwealth**), wherein the Supreme Court ruled that an MR of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA, is not applicable for the reasons detailed below:

1. The factual milieu in *Fishwealth* is different from this case in that in the former, there is no showing that a criminal complaint was filed against the taxpayer concerned; whereas, in the latter, respondent had filed a criminal case against petitioner for alleged failure to present its books of account for the years 2006 to 2010. Petitioner then insists that the pendency of the said criminal case is *prima facie* proof that respondent has yet to determine any alleged tax deficiencies for the taxable year (**TY**) 2006 for which period the subject assessment pertains.

2. In *Fishwealth*, it was shown that the pertinent Letter of Authority (**LOA**) issued by the Commissioner of Internal Revenue (**CIR**) against the taxpayer concerned was issued within the three-year prescriptive period under the NIRC of 1997, as amended; whereas, in this case, petitioner did not receive any LOA from respondent within the three-year prescriptive period and the Preliminary Assessment Notice (**PAN**) dated 17 February 2014[8] is invalid for having been issued beyond the three-year prescriptive period. Thus, petitioner claims that the PAN and the subsequent FDDA signed by then Commissioner Henares are void for being fruits of a poisonous tree.

3. In *Fishwealth*, there is no showing that the LOA issued by the CIR against the taxpayer concerned was prompted by an

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[7] G.R. No. 179343, 21 January 2010.

[8] Annexes "C" to "C-2" attached to the Petition for Review, *Rollo*, pp. 33-35.

information from an informant; whereas, in this case, petitioner had amply discussed that the sole basis of the assessment by respondent for alleged tax deficiency is the confidential information from a third-party informant, Manuel Villatuya (**Villatuya**). Petitioner claims that respondent failed to observe the procedure under Revenue Memorandum Order (**RMO**) No. 46-2004[9], pertaining to the conduct of an assessment based on third-party information, when respondent did not give petitioner an opportunity to confront Villatuya and determine his real motive.

4. In *Fishwealth*, there is no showing that the CIR issued to the taxpayer concerned a certification of "no tax liability"; whereas, in this case, petitioner was able to secure a Certificate of No Outstanding Liability dated 15 July 2015[10] from Revenue District Office (**RDO**) No. 57 in connection with its application for cancellation of registration.

On the other hand, respondent, in his Comment/Opposition, maintains that the Court *En Banc* correctly upheld the decision of the Court's Third Division which dismissed *motu proprio* the original Petition for Review for lack of jurisdiction over it having been filed beyond the 30-day period provided by law.

Respondent insists that the assessment issued against petitioner has already become final, executory and demandable because petitioner failed to timely file an appeal before the Court's Third Division. Respondent likewise counters that the ruling in *Fishwealth* relied on by the Court dwells on the procedural aspect and thus, is applicable to the present case. In this regard, respondent also points out that petitioner's arguments delve on the merits of the case which the Court cannot take cognizance of as it has no jurisdiction to do so. It is thus futile to discuss the issues raised by petitioner because the Court cannot rule on the same.

At the outset, the Court *En Banc* finds that most of the contentions in the present MR are mere reiterations or amplifications

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[9] *Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.*

[10] Annex "N" attached to the Petition for Review, *Rollo*, p. 55.

of the arguments raised by petitioner in its petition, all of which were duly considered in the assailed Decision.

We resolve below.

It is undisputed that a party adversely affected by a decision of the CIR may file an appeal with this Court within thirty (30) days after the receipt of such decision.[11] This finds basis under Section 228 of the NIRC of 1997, as amended, which lays down the procedure in protesting the assessment, to wit:

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> **Sec. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: ...
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> ...
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> **<u>If the protest is denied in whole or in part</u>**, or is not acted upon within one hundred eighty (180) days from submission of documents, **<u>the taxpayer adversely affected by the decision</u>** or inaction **<u>may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision</u>**, or from the lapse of one hundred eighty (180)-day period; **<u>otherwise, the decision shall become final, executory and demandable</u>**.[12]
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> ...

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[11] See Section 11 of Republic Act (RA) No. 1125, as amended by RA 9282, and Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA).

[12] Emphasis and underscoring supplied.

With respect to the denial of an administrative protest by the CIR and the remedy of appeal from such denial, RR No. 12-99[13], as amended by RR No. 18-2013[14], which implemented the above-quoted provision, pertinently provides, in part, that:

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> 3.1.4 *Disputed Assessment.* —
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> ...
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> **If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.**[15]
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> ...

As We have held in the assailed Decision, the decision referred to in the foregoing provision that is appealable to the Court in Division is the FDDA signed by Commissioner Henares and not the Letter dated 25 June 2019[16] (**Demand Letter**), which was merely signed by then Assistant Commissioner for Enforcement & Advocacy Service James H. Roldan (**ACIR Roldan**). As such, when petitioner opted to file an MR with then Commissioner Henares and awaited the latter's resolution therefor, petitioner took the risk of allowing the 30-day appeal period to lapse and the assessment in question to become final and unappealable.

To reiterate, the decision appealable to this Court is the decision of the respondent on the disputed assessment or the FDDA issued by then Commissioner Henares and not the Demand Letter issued by ACIR Roldan after the assessment has attained finality. While petitioner may file an MR of then Commissioner Henares' denial, the same shall not toll the 30-day period to appeal to this Court. In other words, while petitioner is not prevented from filing a request for reconsideration with respondent, the resort to this Court within the

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[13] Supra at note 5.
[14] Supra at note 6.
[15] Emphasis and underscoring supplied.
[16] Annex "B" attached to the Petition for Review, *Rollo*, p. 36.

30-day period remains mandatory and indispensable to prevent such decision from becoming final, executory and demandable.

Since the subject FDDA was not timely appealed with the Third Division, the same had become final, executory and demandable. Consequently, petitioner can no longer raise any question concerning the validity or correctness of the assessment as the sole avenue to assert the same has been effectively foreclosed.

As regards petitioner's contention that the ruling in *Fishwealth* is not applicable to this case as they differ in factual milieu, We are not persuaded. While it may be true that there are certain factual differences in the *Fishwealth* and the present case, the same is of no moment.

It must be emphasized that both in *Fishwealth* and in the present case, it was the CIR himself who issued the FDDA. Thus, the Supreme Court's ruling in the former is applicable to the latter in that an MR on the FDDA is not the remedy allowed under Section 3.1.4 of RR No. 12-99[17], as amended by RR No. 18-2013.[18] Petitioner's attempt to excuse itself from the operation of the settled procedural rule that an MR does not toll the running of the period to appeal, is thus without legal mooring.

Even assuming for the sake of argument that the factual differences cited by petitioner warrant the relaxation of such settled procedural rule, We are not convinced that the same would merit the nullification of respondent's assessment against it.

First, the fact that respondent initiated a criminal complaint for failure to present books of accounts that covers TY 2006 does not automatically lead to the conclusion that respondent has yet to determine any alleged tax deficiencies for TY 2006. Notably, Section 5[19]

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17 Supra at note 5.

18 Supra at note 6.

19 **Sec. 5.** *Power of the Commissioner to Obtain Information, and to Summon, Examine and Take Testimony of Persons.* — In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) **To examine any book, paper, record, or other data which may be relevant or material to such inquiry;**

of the NIRC of 1997, as amended, authorizes the CIR to obtain information from other sources other than those obtained from the taxpayer to assess the proper tax. As admitted by petitioner, respondent's assessment was based on confidential information from a third-party informant.

Second, as to its non-receipt of any LOA issued within the three-year prescriptive period, this assertion does not categorically say that petitioner did not receive an LOA at all but that it did not receive the same within the three-year prescriptive period. It is worth noting that respondent, in his Comment/Opposition, alleged that there was substantial under-declaration of petitioner's income that rendered its returns for TY 2006 fraudulent. In which case, what applies is the ten-year prescriptive period under Section 222 (a)[20] of the NIRC of 1997, as amended, which is reckoned from the discovery of the fraud specifically at the time of the issuance of the PAN[21], and not the ordinary three-year period.

It must also be noted that petitioner's aforesaid claim of non-receipt of any LOA issued within the three-year prescriptive period is being raised for the first time in the present MR. It was never raised in its petition before the Third Division as well as before the Court *En Banc*. The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in an MR as in this case,

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(B) **To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation**, or from any office or officer of the national and local governments, government agencies, and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members[.] (Emphasis supplied.)

20 **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

21 Issued on 17 February 2014, supra at note 8.

because to allow the same would be offensive to the basic rules of fair play, justice and due process.[22]

Third, there is nothing in RMO No. 46-2004[23] that requires respondent to give petitioner an opportunity to confront Villatuya, the third-party informant. Instead, it merely requires respondent to obtain sworn statements from third-party sources, attesting to the veracity of the data provided. At any rate, petitioner did not make any allegation that respondent failed to obtain a sworn statement from Villatuya.

Lastly, the fact that petitioner has secured a Certificate of No Outstanding Liability[24] from RDO 57 in connection with its application for cancellation of registration does not preclude respondent from pursuing an assessment against petitioner as the government can never be in estoppel, particularly in matters involving taxes.[25]

In a nutshell, given petitioner's own admission that it received on 20 July 2016 the subject FDDA, which is respondent's final decision on its administrative protest, petitioner only had until 19 August 2016 within which to elevate its appeal to the Court in Division. When the original Petition for Review was filed before the Third Division on 03 September 2019, it was clearly beyond the period allowed by law. Accordingly, prescription on the filing of the said petition has already set in, thereby depriving the Third Division of jurisdiction over the same.

We are not unaware that law and jurisprudence have vested this Court with jurisdiction on other matters arising under the NIRC or other laws administered by the BIR. However, such jurisdiction is not

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22 *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, (Resolution) G.R. No. 168498, 24 April 2007, 522 SCRA 144; *Hubert Nuñez v. SLTEAS Phoenix Solutions, Inc.*, G.R. No. 180542, 12 April 2010, 618 SCRA 134; *American Home Insurance Co. of New York v. F. F. Cruz & Co., Inc.*, G.R. No. 174926, 10 August 2011, 655 SCRA 248; *Padilla Mercado, et al. v. Sps. Espina*, G.R. No. 173987, 25 February 2013, 691 SCRA 545; *Ma. Consolacion M. Nahas v. Juanita L. Olarte*, G.R. No. 169247, 02 June 2014, 724 SCRA 224; *Luzviminda Apran Canlas v. Republic of the Philippines*, G.R. No. 200894, 10 November 2014; and, *Cheryl Santos Leus v. St. Scholastica's College Westgrove and/or Sr. Edna Quiambao, OSB*, G.R. No. 187226, 28 January 2015, 378 SCRA 394.

23 Supra at note 9.

24 Supra at note 10.

25 See *Commissioner of Internal Revenue v. Procter and Gamble PMC, et al.*, G.R. No. L-66838, 15 April 1988, 160 SCRA 560.

absolute but is pre-conditioned on whether prescription has already set in.[26]

Verily, from the factual allegations in the Petition for Review as well as in the present MR, petitioner's right to file an appeal before this Court was already prescribed at the time of its filing its original Petition for Review.

While it is true that a void assessment bears no fruit,[27] it is equally and undeniably true that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.[28] The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[29] Before this Court could validly make any finding as regards the validity or correctness of the assessment, it must first be established that the appeal was duly perfected and that this Court validly acquired jurisdiction over the case. The cart cannot be placed before the horse. Given that petitioner's judicial appeal is already time-barred, the Court in Division, much less the Court *En Banc*, never acquired jurisdiction over the present case. Having no jurisdiction over the present case, We cannot perform any action therefor except to dismiss the same.[30]

All told, the Court *En Banc* therefore finds no justifiable reason to modify the assailed Decision.

WHEREFORE, premises considered, petitioner B. Nevalga Enterprises Corp. By: Benito B. Nevalga's Motion for Reconsideration (To the Decision dated February 19, 2021) filed on 15 March 2021 is hereby **DENIED** for lack of merit.

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26 See *Ten-Four Readymix Concrete, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 10081, 16 January 2020.

27 See *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010, 637 SCRA 647; and, *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, 27 January 2006, 480 SCRA 396.

28 See *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, 11 August 2010, 628 SCRA 105; *China Banking Corporation v. City Treasurer of Manila*, G.R. No. 204117, 01 July 2015, 761 SCRA 238, 251; and, *Domingo Neypes, et al. v. Hon. Court of Appeals, et al.*, G.R. No. 141524, 14 September 2005, 469 SCRA 641.

29 Id.

30 *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, 17 June 2015, 759 SCRA 313; *Katon v. Palanca, Jr.*, G.R. No. 151149, 07 September 2004, 481 Phil. 168.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CONCUR:

(With due respect, I maintain my D.O.)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With due respect, I join PJ's D.O. in assailed Decision)
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join PJ's D.O.)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice