REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1161
(CTA Case No. 8112)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

KEPCO PHILIPPINES CORPORATION,
Respondent.

CTA EB NO. 1166
(CTA Case No. 8112)

Present:
DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUL 11 2016 3:35 p.m.

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RESOLUTION

DEL ROSARIO, PJ.:

This resolves Kepco Philippines Corporation (Kepco)'s **"MOTION FOR RECONSIDERATION"** filed on December 21, 2015, without the Commissioner of Internal Revenue (CIR)'s comment, despite notice.

The motion is anchored on the following grounds:

1) the Petition for Review filed in Court of Tax Appeals(CTA) Case No. 8112 was duly filed on time; that May 25, 2010 was merely the last day of the 180 day period and not the expiration or the lapse of the 180th day for the CIR to decide on the protest. The expiration or the lapse of the 180 day period was on May 26, 2010, or the day following the 180th day (May 25, 2010). Thus, the 30 day period to appeal to the CTA must be counted from May 26, 2010;

2) that reckoning the 30 day period to appeal on May 25, 2010 violates the principle of exhaustion of administrative remedies as the taxpayer must wait for the lapse of the 180 day period before filing an appeal with the CTA; and,

3) that Kepco will suffer grave injustice and its case is meritorious.

After a careful and thorough evaluation of the points and arguments raised in the motion, the Court *En Banc* finds no cogent reason to warrant the reconsideration sought.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> SEC. 228. Protesting of Assessment. – xxx
>
> xxx xxx xxx
>
> 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.
>
> If the protest is denied in whole or in part, or **is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, or from the lapse of**

> **one-hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable**. (Emphasis supplied)

From the afore-quoted provision, it is clear that a taxpayer has 30 days from the lapse of the 180-day period within which to appeal to the CTA. The Court agrees with Kepco that the last day of the 180 day period for the CIR to decide the protest was on May 25, 2010. Thus, at 11:59:59pm on May 25, 2010, the 180-day period lapsed. The following day, May 26, 2010, was the start of the 30-day period for Kepco to file an appeal with the CTA. Hence, the 30-day period to appeal expired on June 24, 2010, and not on June 25, 2010, as claimed by Kepco.

The foregoing pronouncement that the counting of the 30-day period to appeal starts from the day after the 180th day is consistent with the doctrine laid down by this Court as early as in 2008 in the case of *ABN-AMRO Savings Bank Corporation (now ABN AMRO Bank, Inc.) v. Commissioner of Internal Revenue,*[1] cited by KEPCO in its motion, viz:

> The case at bar reveals that the petitioner filed its letter protest on January 28, 2004, therefore, it has sixty (60) days, until March 28, 2004, within which to submit the relevant supporting documents. Records of the case, however, is bereft of proof that petitioner had submitted the relevant documents on or before March 28, 2004, therefore, applying the pronouncement in the Oceanic case, **the 180-day period shall be reckoned from the filing of the protest on January 28, 2004, which ends on July 26, 2004**.
>
> xxx xxx xxx
>
> Here, from the expiry of the 180 day period, petitioner opted to appeal to this Court the inaction of the Commissioner involving the subject deficiency documentary stamp tax assessment by way of filing the Petition for Review on October 25, 2004. Section 228 of the Tax Code clearly provides that an appeal to this Court should be made within 30 days from the lapse of the 180-day period, which as earlier mentioned is reckoned from the filing of the protest considering that there was no relevant supporting documents submitted within the 60-day period. Thus, **the petitioner has thirty (30) days from lapse of the 180-day period, which starts on July 27, 2004 up to August 25, 2004 within which to appeal before this Court**. (Emphases supplied)

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[1] C.T.A. Case No. 7089, September 10, 2008.

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[2] the Supreme Court sustained the manner by which the CTA computated the 30-day period within which an appeal by way of a petition for review may be made, that is -- from the day following the 180th day the CIR may decide the protest, *viz*:

> The CTA Second Division held:
>
> > Following the periods provided for in the aforementioned laws, from July 20, 2001, that is, the date of petitioner's filing of protest, it had until September 18, 2001 to submit relevant documents and from September 18, 2001, **the Commissioner had until March 17, 2002 to issue his decision**. As admitted by petitioner, the protest remained unacted by the Commissioner of Internal Revenue. **Therefore, it had until April 16, 2002 within which to elevate the case to this court**. Thus, when petitioner filed its Petition for Review on April 30, 2002, the same is outside the thirty (30) [day] period.
>
> As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.
>
> In Ker & Company, Ltd. v. Court of Tax Appeals, the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.
>
> **In fine, the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment.** (Emphases supplied)

In the case at bar, records show that Kepco filed its Petition for Review only on June 25, 2010, which is one (1) day beyond the 30-day reglementary period. Settled is the rule that the **failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment.**[3]

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[2] G.R. No. 168498, June 16, 2006.
[3] Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006.

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Moreover, in *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*,[4] the Supreme Court reiterated the long standing doctrine that without jurisdiction, the court may only dismiss the case and not decide it on the merits, *viz*:

> At this juncture, it bears emphasis that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. **If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.** Needless to state, to obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties. As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings. **Therefore, even if there was no jurisdictional issue raised by any party, the Court may look into it at <u>anytime of the proceedings</u>, even during this appeal.** (Emphases supplied)

Lastly, the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise.[5] Resort to a liberal application, or suspension of the application of procedural rules may not simply be invoked to disregard the jurisdictional and mandatory period of appeal. *CIR v. San Roque Power Corporation*,[6] elucidates:

> This Court should not establish the precedent that non-compliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements, for then every tax refund case will have to be decided on the numerical correctness of the amounts claimed, regardless of non-compliance with mandatory and jurisdictional conditions.

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[4] G.R. No. 185969, November 19, 2014.
[5] Hedcor, Inc. v. Commissioner of Internal Revenue, G.R. No. 207575 , July 15, 2015.
[6] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

WHEREFORE, premises considered, Kepco Philippines Corporation's **"MOTION FOR RECONSIDERATION"** filed on December 21, 2015 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

(*With Dissenting Opinion)*
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
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KEPCO PHILIPPINES CORPORATION, *Petitioner,*	**CTA *EB* No. 1161** (CTA Case No. 8112)
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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* No. 1166** (CTA Case No. 8112)
-versus-	Present: ***Del Rosario, P.J.*** ***Castañeda, Jr.,*** ***Bautista,*** ***Uy,*** ***Casanova,*** ***Fabon-Victorino,*** ***Mindaro-Grulla,*** ***Cotangco-Manalastas,*** *and* ***Ringpis-Liban, JJ.***
KEPCO PHILIPPINES CORPORATION, *Respondent.*	Promulgated: JUL 11 2016 3:35 p.m.

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DISSENTING OPINION

BAUTISTA, J.:

With due reverence to the *ponente,* I respectfully disagree with the denial of the Motion for Reconsideration filed by petitioner.

Section 228 of the National Internal Revenue Code of 1997 ("1997 NIRC") is the relevant provision on this matter, *viz.*:[1]

> SECTION 228. *Protesting of Assessment.* – xxx
>
> xxx xxx xxx
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the **lapse** of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

From the foregoing, it is evident that upon filing of the protest, the Commissioner of Internal Revenue ("CIR") has 180 days to act thereon. Should she fail to act on the protest within the 180-day period, the taxpayer may file its appeal with the Court of Tax Appeals ("CTA") within 30 days from the **lapse** of the said 180 days.

Article 13 of the New Civil Code sheds light on how periods are counted, as follows:[2]

> ARTICLE 13. When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.
>
> If months are designated by their name, they shall be computed by the number of days which they respectively have.
>
> In computing a period, the first day shall be excluded, and the last day included.

In the case at bar, petitioner filed its protest on November 26, 2009. Hence, the CIR had 180 days therefrom or until May 25, 2010 within which to act on the protest. Following *Article 13 of the New Civil Code*, excluding the first day (November 26, 2009), including the

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[1] Underscoring ours.
[2] Underscoring ours.

last day (May 25, 2010), and using the actual number of days in each month involved, counting is as follows:

DAY	COUNT	DATE	DAY	COUNT	DATE	DAY	COUNT	DATE
1	0	11/26/2009	62	61	1/26/2010	123	122	3/28/2010
2	1	11/27/2009	63	62	1/27/2010	124	123	3/29/2010
3	2	11/28/2009	64	63	1/28/2010	125	124	3/30/2010
4	3	11/29/2009	65	64	1/29/2010	126	125	3/31/2010
5	4	11/30/2009	66	65	1/30/2010	127	126	4/1/2010
6	5	12/1/2009	67	66	1/31/2010	128	127	4/2/2010
7	6	12/2/2009	68	67	2/1/2010	129	128	4/3/2010
8	7	12/3/2009	69	68	2/2/2010	130	129	4/4/2010
9	8	12/4/2009	70	69	2/3/2010	131	130	4/5/2010
10	9	12/5/2009	71	70	2/4/2010	132	131	4/6/2010
11	10	12/6/2009	72	71	2/5/2010	133	132	4/7/2010
12	11	12/7/2009	73	72	2/6/2010	134	133	4/8/2010
13	12	12/8/2009	74	73	2/7/2010	135	134	4/9/2010
14	13	12/9/2009	75	74	2/8/2010	136	135	4/10/2010
15	14	12/10/2009	76	75	2/9/2010	137	136	4/11/2010
16	15	12/11/2009	77	76	2/10/2010	138	137	4/12/2010
17	16	12/12/2009	78	77	2/11/2010	139	138	4/13/2010
18	17	12/13/2009	79	78	2/12/2010	140	139	4/14/2010
19	18	12/14/2009	80	79	2/13/2010	141	140	4/15/2010
20	19	12/15/2009	81	80	2/14/2010	142	141	4/16/2010
21	20	12/16/2009	82	81	2/15/2010	143	142	4/17/2010
22	21	12/17/2009	83	82	2/16/2010	144	143	4/18/2010
23	22	12/18/2009	84	83	2/17/2010	145	144	4/19/2010
24	23	12/19/2009	85	84	2/18/2010	146	145	4/20/2010
25	24	12/20/2009	86	85	2/19/2010	147	146	4/21/2010
26	25	12/21/2009	87	86	2/20/2010	148	147	4/22/2010
27	26	12/22/2009	88	87	2/21/2010	149	148	4/23/2010
28	27	12/23/2009	89	88	2/22/2010	150	149	4/24/2010
29	28	12/24/2009	90	89	2/23/2010	151	150	4/25/2010
30	29	12/25/2009	91	90	2/24/2010	152	151	4/26/2010
31	30	12/26/2009	92	91	2/25/2010	153	152	4/27/2010
32	31	12/27/2009	93	92	2/26/2010	154	153	4/28/2010
33	32	12/28/2009	94	93	2/27/2010	155	154	4/29/2010
34	33	12/29/2009	95	94	2/28/2010	156	155	4/30/2010
35	34	12/30/2009	96	95	3/1/2010	157	156	5/1/2010
36	35	12/31/2009	97	96	3/2/2010	158	157	5/2/2010
37	36	1/1/2010	98	97	3/3/2010	159	158	5/3/2010
38	37	1/2/2010	99	98	3/4/2010	160	159	5/4/2010
39	38	1/3/2010	100	99	3/5/2010	161	160	5/5/2010
40	39	1/4/2010	101	100	3/6/2010	162	161	5/6/2010
41	40	1/5/2010	102	101	3/7/2010	163	162	5/7/2010
42	41	1/6/2010	103	102	3/8/2010	164	163	5/8/2010
43	42	1/7/2010	104	103	3/9/2010	165	164	5/9/2010
44	43	1/8/2010	105	104	3/10/2010	166	165	5/10/2010
45	44	1/9/2010	106	105	3/11/2010	167	166	5/11/2010
46	45	1/10/2010	107	106	3/12/2010	168	167	5/12/2010
47	46	1/11/2010	108	107	3/13/2010	169	168	5/13/2010
48	47	1/12/2010	109	108	3/14/2010	170	169	5/14/2010
49	48	1/13/2010	110	109	3/15/2010	171	170	5/15/2010
50	49	1/14/2010	111	110	3/16/2010	172	171	5/16/2010

51	**50**	1/15/2010	**112**	**111**	3/17/2010	**173**	**172**	5/17/2010
52	**51**	1/16/2010	**113**	**112**	3/18/2010	**174**	**173**	5/18/2010
53	**52**	1/17/2010	**114**	**113**	3/19/2010	**175**	**174**	5/19/2010
54	**53**	1/18/2010	**115**	**114**	3/20/2010	**176**	**175**	5/20/2010
55	**54**	1/19/2010	**116**	**115**	3/21/2010	**177**	**176**	5/21/2010
56	**55**	1/20/2010	**117**	**116**	3/22/2010	**178**	**177**	5/22/2010
57	**56**	1/21/2010	**118**	**117**	3/23/2010	**179**	**178**	5/23/2010
58	**57**	1/22/2010	**119**	**118**	3/24/2010	**180**	**179**	5/24/2010
59	**58**	1/23/2010	**120**	**119**	3/25/2010		**180**	**5/25/2010**
60	**59**	1/24/2010	**121**	**120**	3/26/2010			
61	**60**	1/25/2010	**122**	**121**	3/27/2010			

The *ponencia* provides the same last day of May 25, 2010, but continued counting the 30-day period therefrom, without skipping a day to account for the word "lapse" in *Section 228 of the 1997 NIRC.*

Based on *Section 228 of the 1997 NIRC* in relation to *Article 13 of the New Civil Code,* the CIR had until the whole day of May 25, 2010 to grant or deny petitioner's protest. Considering that by the end of May 25, 2010, the CIR failed to act on petitioner's protest, petitioner had 30 days from the LAPSE of the 180 day period to file its appeal.

Therefore, in counting the 30-day period, the first day cannot fall on May 25, 2010 since the 180-day period has not yet ended. Hence, the first day falls on May 26, 2010, when the period was indeed completed.

Following *Article 13 of the New Civil Code,* excluding the first day (May 26, 2010), including the last day (June 25, 2010), and using the actual number of days in each month involved, counting should be as follows:

DAY	COUNT	DATE	DAY	COUNT	DATE	DAY	COUNT	DATE
1	**0**	**5/26/2010**	**12**	**11**	6/6/2010	**23**	**22**	6/17/2010
2	**1**	5/27/2010	**13**	**12**	6/7/2010	**24**	**23**	6/18/2010
3	**2**	5/28/2010	**14**	**13**	6/8/2010	**25**	**24**	6/19/2010
4	**3**	5/29/2010	**15**	**14**	6/9/2010	**26**	**25**	6/20/2010
5	**4**	5/30/2010	**16**	**15**	6/10/2010	**27**	**26**	6/21/2010
6	**5**	5/31/2010	**17**	**16**	6/11/2010	**28**	**27**	6/22/2010
7	**6**	6/1/2010	**18**	**17**	6/12/2010	**29**	**28**	6/23/2010
8	**7**	6/2/2010	**19**	**18**	6/13/2010	**30**	**29**	6/24/2010
9	**8**	6/3/2010	**20**	**19**	6/14/2010		**30**	**6/25/2010**
10	**9**	6/4/2010	**21**	**20**	6/15/2010			
11	**10**	6/5/2010	**22**	**21**	6/16/2010			

Based on the records, petitioner filed its Petition for Review with the CTA on June 25, 2010, the last day provided by law. Hence, it was filed within the statutory period.

Having said the foregoing, I vote to grant petitioner's Motion for Reconsideration.

LOVELL R. BAUTISTA
Associate Justice