REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2352** (CTA Case No. 9595)
	Present:
- versus -	**DEL ROSARIO,** P.J., **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** JJ.
RUBEN U. YU, Respondent.	***Promulgated:*** JAN 09 2023 1:45 pm

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RESOLUTION

UY, J.:

For resolution is respondent's *Motion for Reconsideration*[1] filed on September 23, 2022, with petitioner's *Comment/Opposition (Re: Motion for Reconsideration dated 19 September 2022)*[2] filed on November 4, 2022.

In the said *Motion*, respondent prays that the Court *En Banc*: 1) reconsider and set aside the *Decision* promulgated on August 16, 2022; and 2) reinstate and affirm the *Decision* dated June 15, 2020 and the *Resolution* dated September 15, 2020 rendered by the Second Division of the Court in CTA Case No. 9595. The dispositive portion of the Court *En Banc's* assailed *Decision* dated August 16, 2022, reads:

[1] EB Docket, pp. 133 to 136.
[2] EB Docket, pp. 136 to 140.

"**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**.

The assailed *Decision* dated June 15, 2020 and the assailed *Resolution* dated September 15, 2020 by the Second Division of this Court in CTA Case No. 9595 are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED."

Respondent's arguments:

In his *Motion*, respondent avers that waiting for petitioner's reply to his request for reconsideration would be futile; thus, he availed of the option of appealing to the Court in Division within thirty (30) days from the expiration of the one hundred eighty (180)-day period for petitioner to act on the administrative appeal.

Respondent stresses that the counting of the one hundred eighty (180)-day period provided for in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, is reckoned from the time the request for reconsideration was sent to petitioner. In the instant case, said request was sent on September 20, 2016; thus, the one hundred eighty (180)-day period prescribed on March 19, 2017 without any action from petitioner. Respondent asserts that it seasonably filed his *Petition for Review* on April 17, 2017, or within the thirty (30) days from the lapse of the one hundred eighty (180)-day period for petitioner to act on respondent's request for reconsideration.

Respondent also points out that the issue on jurisdiction was never raised by petitioner; thus, estoppel in the instant case has set in. According to respondent, petitioner's silence throughout the proceedings of the instant case relative to the issue on jurisdiction is deemed a waiver resulting in the tacit acceptance of the Court in Division's jurisdiction to take cognizance of the *Petition for Review* in CTA Case No. 9595.

Petitioner's counter-arguments:

Petitioner counter-argues that the Court *En Banc* is correct in stating that CTA Case No. 9595 was prematurely filed; hence, the Court in Division had no jurisdiction to take cognizance of the same.

THE COURT *EN BANC*'S RULING

Respondent's *Motion* lacks merit.

Petitioner is not given a fresh one hundred eighty (180)-day period to act on the administrative appeal.

In the assailed *Decision*, the Court *En Banc* has emphasized that the one hundred eighty (180)-day period referred to in Section 228 of the NIRC of 1997, as amended, and in Section 2.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, is confined only to the period within which either the Commissioner of Internal Revenue (CIR) or his/her duly authorized representative may act on the **initial protest** against the Final Assessment Notice/Formal Letter of Demand (FLD).

The pertinent portion of RR No. 12-99, as amended by RR No. 18-2013, is clear that the one hundred eighty (180)-day period is counted from the date of the filing of the protest, and not from the filing of the administrative appeal, as respondent would have Us believe, to wit:

> "If the protest or **administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days <u>counted from the date of filing of the protest</u>**, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after [sic] the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision." *(Emphasis and underscoring supplied)*

In the instant case, respondent filed a protest on December 3, 2022, disputing the correctness and validity of the FLD and requesting for a reinvestigation. Thus, respondent had sixty (60) days[3] from December 3, 2015, or until February 1, 2016 to submit the required documents. Meanwhile, Regional Director (RD) Alberto S. Olasiman had one hundred eighty (180) days counted from February 1, 2016, or until July 30, 2016 to act on respondent's protest.

However, RD Olasiman issued the revised FLD only on August 22, 2016, or 23 days after the lapse of the one hundred eighty (180)-day period. As discussed in the assailed *Decision*, the revised FLD constitutes as the final decision, following the ruling of the Supreme Court in *Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals and Commissioner of Internal Revenue*.[4] Thus, it is apparent that instead of appealing the case to the Court in Division within thirty (30) days after the expiration of the one hundred eighty (180) day-period for the protest to be acted upon by RD Olasiman, **respondent opted to wait for RD Olasiman's final decision**. The relevant portion of RR No. 12-99, as amended by RR No. 18-2013, provides:

> "If the **protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted** from the date of filing of the protest in case of a request reconsideration [sic]; or **from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) <u>await the final decision of the Commissioner's duly authorized representative on the disputed assessment</u>**." *(Emphasis and underscoring supplied)*

As such, when respondent filed a request for reconsideration with petitioner on September 20, 2016, the one hundred eighty (180)-day period, **counted from the date of the filing of the protest**, for petitioner to act on the request for reconsideration/administrative appeal, had already lapsed on July 30, 2016. Thus, respondent's only option now is to wait for petitioner's decision on his request for

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[3] The pertinent portion of Section 228 of the NIRC of 1997, as amended, provides:

"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." *(Emphasis supplied)*

[4] G.R. No. L-25289, June 28, 1974.

reconsideration considering that the one hundred eighty (180) + thirty (30)-day period is no longer available to respondent.

From the foregoing, the filing of respondent's *Petition for Review* in CTA Case No. 9595 was premature considering that respondent still has not received petitioner's decision on his request for reconsideration.

The doctrine of estoppel is not applicable in the instant case; there is no tacit acceptance of the Court in Division's jurisdiction on the part of petitioner.

While it is true that petitioner never raised the issue on jurisdiction, his silence is not tantamount to a waiver or a tacit acceptance of the Court in Division's jurisdiction to take cognizance of the *Petition for Review* in CTA Case No. 9595.

The Supreme Court's ruling in *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*[5] is instructive, to wit:

> "It must be emphasized 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 <u>not by the consent or waiver</u> 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 <u>cannot be cured by the silence, acquiescence, or even by express consent of the parties</u>.** 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." *(Emphasis and underscoring supplied)*

In his *Motion*, respondent invokes the case of *Serafin Tijam, et al. v. Magdaleno Sibonghanoy, et al.*[6] (*Tijam*) which is an exception to

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[5] G.R. No. 185666, February 4, 2015.
[6] G.R. No. L-21450, April 15, 1968.

the general rule that a court's lack of jurisdiction may be raised at any stage of the proceedings, even on appeal.[7]

However, *Tijam* is not applicable to the case at bar. In *Tijam*, the Supreme Court ruled that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the losing party to question the jurisdiction or power of the court, to wit:

> "It has been held that **a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction** (Dean v. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice cannot be tolerated — obviously for reasons of public policy.
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> Furthermore, it has also been held that **after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court** (Pease v. Rathbun-Jones etc. 243 U.S. 273, 61 L. Ed. 715, 37 S. Ct. 283; St. Louis etc. v. McBride, 141 U.S. 127, 35 L. Ed. 659). And in Littleton v. Burgess, 16 Wyo. 58, the Court said that **it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty**." *(Emphasis supplied)*

In the instant case, however, while it is true that petitioner never raised the issue on jurisdiction, petitioner also did not question the Court in Division's jurisdiction after obtaining an unfavourable judgment. Thus, *Tijam* finds no application in the case at bar. Notably, it was the Court *En Banc* that ruled on the issue on jurisdiction even if not raised by the parties.

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[7] *Venancio Figueroa y Cervantes v. People of the Philippines,* G.R. No. 147046, July 14, 2008.

Accordingly, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice