REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LARRY E. SEGAYA/LES ENGINEERING AND CONSTRUCTION,
Petitioner,

- versus -

COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9875

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:

JUL 14 2021 2:58 AM

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RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is petitioner's **Motion for Reconsideration** filed through registered mail on March 15, 2021, and received by the Court on May 21, 2021, with respondent's **Comment/Opposition (Re: Petitioner's Motion for Reconsideration)** filed on June 17, 2021.

On February 26, 2021, the Court promulgated a Decision dismissing the present Petition for Review for being filed out of time, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the instant *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.
>
> **SO ORDERED**." Jc

In its Motion, petitioner primarily begs the indulgence of the Court to take a second look on the factual milieu surrounding the case and pass upon the issue of prescription. Petitioner asserts that without such a legal defense, taxpayers would be placed in an unfair playing field and would be required to merely pay any assessed deficiency tax regardless of whether respondent's right to assess and collect the same have already prescribed. Petitioner continues that the issue of whether respondent's right to assess and collect tax has prescribed is a separate and distinct issue which is well within the jurisdiction of the Court to decide, even assuming that respondent's subject assessment has become final, executory, and demandable for petitioner's failure to timely file its Petition for Review. Nonetheless, petitioner claims that respondent's deficiency assessments have no legal and factual bases.

On the other hand, in his comment, respondent mainly reiterates that his right to assess petitioner has not prescribed and that the Court correctly ruled that it has no jurisdiction over the instant case due to the untimely filing of the Petition for Review. Respondent insists that since the assessment had become final, executory, and demandable, there is no disputed assessment over which the Court can take jurisdiction.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

Again, jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. x x x Perforce, **it is important that a court or tribunal should first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.**[1] And, the Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[2]

In this jurisdiction, Sections 7(a)(2) and 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282 vest this Court exclusive appellate jurisdiction, *inter alia*, to take cognizance of respondent's

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[1] *Bernadette S. Bilag, et al. v. Estela Ay-ay, et al.,* G.R. No. 189950, April 24, 2017.
[2] *Allied Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 175097, February 5, 2010.

inactions involving disputed assessments provided they be filed within thirty (30) days after the expiration of the period fixed by law, to wit:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> x x x
>
> > (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**;" *(Emphases supplied)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal· Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA **within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for actions as referred to in Section 7(a)(2) herein**.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days** from receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. xxx." *(Emphases supplied)*

In relation thereto, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the relevant periods in protesting the assessment as well as the period fixed by law for the respondent to act on the disputed assessments, as follows: *gr*

"SECTION. 228. *Protesting of Assessment.* –

x x x

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

x x x

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 the said decision, or **from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final**, executory and demandable." *(Emphases supplied)*

It is clear from the foregoing, that the jurisdiction of the Court was expanded to include not only decisions of the Commissioner of Internal Revenue (CIR) but his inaction as well. The decision or inaction of the CIR is necessary to vest the Court with jurisdiction to entertain a taxpayer's appeal, provided that it is filed within 30 days after the receipt of such decision or after the expiration of the 180-day period within which the CIR to act on the disputed assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[3]

More so, it must be emphasized that Section 228 of the NIRC of 1997, as amended, provides only a total of 180 days for respondent and his authorized representative to decide on petitioner's protest.

[3] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

There is nothing in the said provision which afford a separate 180-day period for respondent's representative to act on the protest and another 180-day period for respondent himself to decide the appealed decision of his authorized representative.

In the present case, petitioner filed his *Protest/Request for Reconsideration* on March 21, 2016. Thereafter, petitioner received the *Final Decision on Disputed Assessment* issued Regional Director Alberto S. Olasiman of Revenue Region No. 11 – Iloilo City, denying petitioner's *Protest/Request for Reconsideration,* on October 27, 2017. Applying the aforementioned provisions, petitioner may either: (i) appeal to the Court within 30 days from date of receipt of the said decision; or (ii) **elevate his protest through request for reconsideration to the CIR within thirty (30) days from date of receipt of the said decision**. Perusal of the records of the case would show that petitioner chose the latter and filed with respondent CIR himself an administrative appeal in the form of a *Request for Reconsideration/Reinvestigation* on November 25, 2017.

Unfortunately, however, the CIR failed to act on petitioner's administrative appeal.

To recall, Section 228 of the NIRC of 1997, as amended, provides only a total of 180 days for respondent and his authorized representative to decide on petitioner's protest and administrative appeal. Accordingly, if the protest or administrative appeal is not acted upon by the respondent within 180 days **counted from the date of filing of the protest**, petitioner may appeal to the Court within 30 days from after the expiration of the 180-day period.

Hence, counting from petitioner's protest filed on March 21, 2016, the 180-day period for respondent to act ended on September 17, 2016. As a result, petitioner only had 30 days from September 17, 2016 or until October 17, 2016 within which to elevate the matter to this Court. Considering that instant *Petition for Review* was filed only on July 16, 2018, the Court is clearly without jurisdiction to entertain the same.

It must be stressed that since a petition for review is a form of appeal, non-compliance with the foregoing rule may render the same dismissible. This is in furtherance of the well-settled rule that "the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost." Verily, compliance with procedural rules is a must, "since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."[4]

On a final note, settled is the rule that an invalid assessment bears no valid fruit.[5] Nevertheless, to legally pronounce the nullity of the assessments in question, the Court must first possess the authority to adjudicate the present controversy. Indeed, petitioner's failure to comply with the 30-day period to appeal would bar the appeal and deprive the Court of its jurisdiction to entertain and determine the merits of the case.

In view of the foregoing disquisitions, this Court finds no compelling reasons to justify the reversal or any modification of the Decision assailed by petitioner.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[4] *Marlon Curammeng y Pablo v. People of the Philippines*, G.R. No. 219510, November 14, 2016.
[5] *Commissioner of Internal Revenue v. Basf Coating + Inks Phils.*, Inc., G.R. No. 198677, November 26, 2014.