**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## *THIRD DIVISION*

**JVC (PHILIPPINES), INC.,**
*Petitioner,*

**CTA Case No. 7927**

- versus-

**Members:**

Bautista, *Chairperson*
Palanca-Enriquez(retired),
Cotangco-Manalastas, *JJ.*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**Promulgated:**

MAR 20 2013
ABFernando 11:02 a.m.

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## R E S O L U T I O N

**COTANGCO-MANALASTAS, *J.:***

This resolves respondent's Motion to Dismiss, filed on January 18, 2013, praying that the instant Petition for Review be dismissed on the ground that this Court has no jurisdiction. More particularly, respondent argues that petitioner failed to file its petition within the 30-day period allowed for appealing to this Court.

In its Opposition/Comment, filed on February 4, 2013, petitioner argues that its Petition for Review is timely filed since it has availed of the option under Revenue Regulations (RR) No. 12-99, which allows a taxpayer to seek reconsideration of the denial of its protest by elevating the same to the Commissioner of Internal Revenue.

A review of the sequence of events is necessary to determine the timeliness of petitioner's appeal.

On December 8, 2008, petitioner received the Formal Letter of Demand dated December 2, 2008, for alleged deficiency taxes for the fiscal year ending March 31, 2004.[1]

On January 7, 2009, petitioner filed its administrative protest with the BIR Large Taxpayers District Office-Makati (BIR-LTDO).[2] Respondent disputes this and alleges that the protest was filed only on January 9, 2009.[3]

On February 9, 2009[4], petitioner received the letter dated January 15, 2009 from the BIR-LTDO denying petitioner's protest for having been filed beyond the 30-day reglementary period to file a protest.[5]

On March 2, 2009, petitioner received the BIR-LTDO's Collection Letter dated February 24, 2009.[6]

On March 5, 2009, petitioner filed its Request for Reconsideration of the BIR's Denial Letter of the Protest Letter Submitted by JVC, with the BIR-LTDO.[7]

On April 1, 2009, petitioner received a letter from the BIR-LTDO, once again denying its administrative protest.[8] Petitioner then filed the instant petition for review on April 30, 2009.[9]

Petitioner would have this Court count the 30-day period from April 1, 2009, the date of receipt of the second letter denying its administrative protest. On the other hand, respondent argues that the 30-day period should be counted from February 9, 2009, which was the date of receipt of the first letter denying petitioner's protest.

We agree with respondent.

While there is a discrepancy as to the date of filing of petitioner's administrative protest – January 7, 2009 according to petitioner, and January 9, 2009 according to respondent, it

[1] Petitioner's Opposition/Comment, p. 3.
[2] Opposition/Comment, p. 3-4
[3] *Rollo*, C.T.A. Case No. 7927, p. 83.
[4] Initially alleged by petitioner to have been received on January 15, 2009, *Rollo*, p. 5 and p. 8.
[5] Opposition/Comment, p. 4.
[6] *Rollo*, p. 9.
[7] *Supra*, Note 5.
[8] *Ibid.*
[9] *Ibid.*

is settled that petitioner's administrative protest was denied. The letter from the BIR-LTDO denying said protest was received by petitioner on February 9, 2009.

The 30-day period within which to appeal must then be counted from the date of receipt of the denial of the administrative protest. Thus, counting thirty days from February 9, 2009, petitioner had until March 11, 2009.

On March 5, 2009, petitioner filed a request for reconsideration. Petitioner alleges that this is an appeal to the Commissioner of Internal Revenue (CIR) pursuant to Section 3.1.5 of RR No. 12-99. However, an examination of petitioner's administrative protest dated January 7, 2009, and the request for reconsideration dated March 4, 2009, shows that while both are addressed to the Commissioner of Internal Revenue, both the protest and the request for reconsideration were to the attention of the Large Taxpayers Service, and were filed with the Large Taxpayers District Office.[10] Thus, petitioner cannot be said to have elevated its protest to the CIR.

Having merely filed a request for reconsideration of the denial of the protest to the BIR-LTDO, petitioner failed to avail of either of the remedies available to it – which were to file an appeal with the CTA or to elevate its protest to the CIR, within the period allowed. As such, the assessment became final, executory and demandable.

Even if this Court were to grant petitioner some leeway and count the 30-day period from petitioner's receipt of the collection letter on March 2, 2009, the petition for review would still be filed out of time.

It is often repeated that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. 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. The right to appeal is not a natural right nor a part of due process. It is merely a

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[10] *Rollo*, p. 35 and p. 55.

statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[11]

**WHEREFORE**, premises considered, the instant Motion to Dismiss is GRANTED. The Petition for Review is hereby DISMISSED for lack of jurisdiction.

**SO ORDERED**.

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

CONCURS:

**LOVELL R. BAUTISTA**
Associate Justice

(retired)
**OLGA PALANCA-ENRIQUEZ**
Associate Justice

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[11] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corp.*, G.R. No. 167606, August 11, 2010.