REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PUBLIC SAFETY MUTUAL BENEFIT FUND, INC., represented by its President, MARIO A. AVENIDO, Petitioner,	**CTA AC NO. 214**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** *and* **BACORRO-VILLENA,** *JJ.*
ROSETTE F. LAQUIAN, ACTING CITY TREASURER, SAN JUAN CITY, Respondent.	Promulgated: NOV 22 2019 9:N a.m.

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RESOLUTION

***MINDARO-GRULLA, J.*:**

Before this Court are the following:

1. Petitioner's **Motion for Reconsideration (of the Decision promulgated on August 27, 2019)**, filed on September 12, 2019, with respondent's **Entry of Appearance with Comment (to the Motion for Reconsideration dated September 12, 2019)**, filed on October 15, 2019; and,

2. Petitioner's **Verified Motion for Suspension of Collection of Tax**, filed on October 11, 2019.

On August 27, 2019, a Decision was rendered by this Court dismissing the Petition for Review for lack of jurisdiction, the dispositive portion of the assailed Decision reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review filed by petitioner Public Safety Mutual Benefit Fund,

Inc. is **DISMISSED** for lack of jurisdiction. Accordingly, the Decision dated October 26, 2018 rendered by the RTC-Branch 160 in Civil Case No. 75377, is **CANCELLED** and **SET ASIDE**. The assessments covering the taxable years 2009 to 2017 are **AFFFIRMED**.

SO ORDERED."

Aggrieved, petitioner seeks reconsideration of the above Decision.

In its Motion, petitioner primarily argues that its right to appeal the local tax assessment to the Regional Trial Court (RTC) – Branch 160, Pasig City has not yet prescribed since the case, *China Banking Corporation vs. City Treasurer of Manila*[1] *("China Banking case")*, cited by this Court as reference is not on all fours with the present case. It continues that, in reference to Section 195 of Republic Act (RA) No. 7160, otherwise known as "The Local Government Code of 1991", as amended, the *China Banking case* involves a deemed denial of protest due to inaction of the City Treasurer, while conversely, in the present case, there was an actual decision issued by the respondent and not mere inaction. Thus, petitioner believes that it still has the right to appeal within thirty (30) days from the receipt of the actual decision of the City Treasurer, even if the decision was issued beyond the 60-day period from filing of the protest.

Perforce, petitioner posits that the said 60-day period within which the local treasurer act on the protest is merely directory in nature and should not serve as a hindrance for the taxpayer to appeal any adverse decision to a competent court.

Petitioner further claims that Section 195 of the LGC should be interpreted in the same manner as Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, since they are of the same nature. It relied on the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*[2] *("Lascona Land case")*, wherein the Supreme Court held that a taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment.

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[1] G.R. No. 204117, July 1, 2015.
[2] G.R. No. 171251, March 5, 2012.

With regard to its Motion for Suspension of Collection of Tax, petitioner alleges that it received a Warrant of Levy from respondent on September 18, 2019. Petitioner claims that the said warrant seeks to collect its supposed business taxes delinquencies from the years 2009 to 2019, in the total amount of ₱216,217,731.24.

Petitioner asserts that the amount sought to be collected pertains to local business tax assessments for different years, such as, the Tax Order of Payment (TOP) 1 covers the years 2009 to 2015, TOP 2 involves 2016 to 2017, and TOP 3 covers 2018 to 2019. Notably, TOP 1 and 2 are the subject matter of the present petition pending with this Court, while TOP 3 is the issue in the petition for review pending before the RTC of San Juan City under Civil Case No. 75466.

Moreover, petitioner claims that respondent's warrant sought to levy properties located along Santolan Rd., West Crame, San Juan City, covering land, building and machinery, which if effected, will certainly jeopardize its interest. Therefore, petitioner prays that this Court grants its motion to suspend collection of tax.

On the other hand, respondent applauded this Court's ruling that the right of petitioner appeal the assessments before the RTC had already prescribed. Respondent insists that there is nothing in Section 195 of the LGC which provides an option for the taxpayer to wait for a decision to be rendered before appealing the subject assessments. She continues that the periods set in the said Section were there for a reason.

More so, Attys. Glen G. Abellon and Rose Andrea V. Milaor formally entered their appearance as counsels for herein respondent.

After due consideration of the arguments raised by the parties, this Court finds no cogent reason to deviate from its ruling. Apropos, petitioner's arguments were mere rehashes of the same facts and issues which have already been thoroughly weighed and discussed in the Decision dated August 27, 2019.

Truly, jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy. It 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 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.[3]

Again, this Court, as well as the court *a quo*, has no jurisdiction to entertain the appeal on the ground that the appeal was filed out of time. Section 195 of the LGC plainly states:

> "SECTION 195. *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. **The local treasurer shall decide the protest within sixty (60) days from the time of its filing.** If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable**." *(Emphasis and underscoring supplied)*

Evidently, the local treasurer is given sixty (60) days to decide on the protest, by issuing either a notice of cancellation of the assessment or denial of the protest. Upon receipt of the notice of denial or upon the lapse of the prescribed 60-day period, the taxpayer has another thirty (30) days within which to file an appeal with the competent court. Otherwise, the assessment becomes conclusive and unappealable.

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[3] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

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The law is clear.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[4]

Applying the foregoing rule, the "denial of the protest" mentioned in the last paragraph of the provision should be read in reference to the notice of denial/cancellation issued by the local treasurer within the 60-day period within which to act on the protest.

As such, the filing of an appeal should be made within thirty (30) days from either receipt of the decision issued before the lapse of the sixty (60) day period or from the lapse of the said period, whichever comes earlier. Thus, petitioner's appeal filed on February 22, 2018 with the RTC, when it should have been filed on March 26, 2016, was filed out of time, which as a result, deprives the said court of its jurisdiction.

Furthermore, so as to clarify that the *China Banking case* falls squarely with the present case, noticeably, in the said case no decision was issued by respondent therein within the 60-day period, hence, petitioner appealed the assessment since it considered the same as a deemed denial due to the inaction of the respondent.

As to petitioner's argument that the interpretation of Section 195 of the LGC should be interpreted the same as Section 228 of the NIRC of 1997, as amended, in accordance with the *Lascona case*, this

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[4] *Philippine International Trading Corporation vs. Commission on Audit*, G.R. 183517, June 22, 2010, citing *Land Bank of the Philippines v. AMS Farming Corporation*, G.R. No. 174971. October 15, 2008, *Mactan-Cebu International Airport Authority v. Urgello*, G.R. No. 162288. April 4, 2007, 520 SCRA 515, 535, *Smart Communications, Inc. vs. The City of Davao*, G.R. No. 155491, September 16, 2008, 565 SCRA 237, 247-248.

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Court finds the argument misplaced. The pertinent portion of Section 228 of the NIRC states that:

> "SEC. 228. *Protesting of Assessment.* –
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> x x x
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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.
>
> **<u>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</u>**; otherwise, the decision shall become final, executory and demandable." *(Emphasis and underscoring supplied)*

From the above, Section 228 of the NIRC of 1997, as amended, provides two options for the taxpayer on when to file an appeal: (1) upon receipt of the denial of the protest; or (2) upon the lapse of the one hundred eighty (180) days from submission of documents.

Comparing the two provisions, Section 195 of the LGC provides for a period for the local treasurer to decide on the protest while Section 228 of the NIRC, as amended, has no such mandate to the Commissioner of Internal Revenue. Thus, the two provisions are not the same.

Lastly, with regard to the finality of the TOP 2 assessment, Section 195 of the LGC clearly states that when a notice of assessment is received by the taxpayer, he may file a written protest within sixty (60) days from the receipt of such notice. Otherwise, the assessment becomes conclusive and unappealable. Considering

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petitioner's admission that it did not file a protest to TOP 2 dated January 18, 2017, the assessment has therefore become conclusive and unappealable by operation of law.

WHEREFORE, petitioners' **Motion for Reconsideration (of the Decision promulgated on August 27, 2019)**, is hereby **DENIED** for lack of merit. Accordingly, considering that this Court has no jurisdiction over the present case, petitioner's **Verified Motion for Suspension of Collection of Tax**, is likewise **DENIED** for lack of jurisdiction.

On the other hand, the **Entry of Appearance** of Attys. Glen G. Abellon and Rose Andrea V. Milaor as counsels for the respondent is hereby **NOTED**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice