REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NUEVA ECIJA II ELECTRIC COOPERATIVE, INC.- Area 2,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9605

Members:

DEL ROSARIO, *P.J., Chairperson*,
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 17 2020 9:40

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on June 2, 2017 by Nueva Ecija II Electric Cooperative, Inc.- Area 2 (petitioner) praying for the withdrawal, cancellation, and/or nullification of the Formal Letter of Demand and Assessment Notice issued by the Commissioner of Internal Revenue (respondent) assessing petitioner for deficiency income tax for taxable year (TY) 2011, in the aggregate amount of Eight Million One Hundred Twenty Eight Thousand Three Hundred Ninety Five Pesos and Ninety Seven Centavos (₱8,128,395.97), inclusive of surcharge and interest.

THE PARTIES

Petitioner is a domestic corporate entity organized and existing under the laws of the Republic of the Philippines and an electric cooperative with principal office address at Barangay Diversion, San Leonardo, Nueva Ecija, with Taxpayer's Identification Number (TIN) 000-540-544-001. Petitioner may be served with notices, summons, orders, resolutions and such other processes of the Court at the office of its counsel at Rovero Tamayo & Partners, 3rd Floor Triple M Commercial Bldg., Doña Soledad Avenue, Better Living, Brgy. Don Bosco, Parañaque City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under appropriate laws with authority to carry out the functions, duties and responsibilities of his office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other laws, rules and regulations. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

THE FACTS

On March 22, 2013, Letter of Authority (LOA) No. LOA-23A-2013-00000023 signed by Regional Director Araceli L. Francisco of Revenue Region No. 4 – San Fernando, Pampanga, was issued, which authorized Revenue Officer (RO) Nenita Rimas and Group Supervisor (GS) Juanita Manansala to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2011 to December 31, 2011 (TY 2011).[3]

Eventually, the audit and examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2011 was reassigned to RO Nemie Ann S. Santos, under GS Manansala, pursuant to Memorandum of Assignment No. MOA23A2013LOA3634 dated March 17, 2015.[4]

On May 19, 2016, petitioner received a Preliminary Assessment Notice (PAN) dated May 10, 2016 issued by Atty. Jethro M. Sabariaga, OIC-Regional Director, Revenue Region No. 4, San

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[1] Par. 1, Petition for Review, CTA Docket, pp. 10-11.
[2] Par. 1, Joint Stipulation of Facts and Issues, CTA Docket, p. 253.
[3] Exhibit R-2, CTA Docket, p. 303.
[4] Exhibit R-1, CTA Docket, p. 302.

Fernando City, Pampanga.[5] Petitioner submitted its Letter-Reply dated June 2, 2016 to the PAN on June 3, 2016.[6]

On June 24, 2016, petitioner received a Formal Letter of Demand (FLD) and Assessment Notices (FAN), all dated June 14, 2016, issued by OIC-Regional Director Sabariaga, assessing petitioner for deficiency Income Tax, Value-Added Tax (VAT), and deficiency Expanded Withholding Tax (EWT), for taxable year 2011.[7] On July 22, 2016, petitioner filed a Letter-Protest dated July 21, 2016, contesting the said FLD and FAN.[8]

On September 19, 2016, petitioner filed a Letter to the BIR manifesting that it submitted its documents in support of its request for reinvestigation.[9]

On October 7, 2016, petitioner received a Final Decision on Disputed Assessment (FDDA) dated September 28, 2016, signed by OIC-Regional Director Sabariaga, reducing the deficiency assessment on VAT and EWT but denying its protest as regards the deficiency income tax.[10]

On November 4, 2016, petitioner filed a Letter dated November 3, 2016, addressed to respondent CIR, requesting for a reconsideration of the payment of the disputed assessment on income tax, while indicating that the deficiency VAT and EWT would be paid by petitioner.[11]

Alleging inaction on the part of respondent, petitioner filed the present Petition for Review on June 2, 2017. Petitioner alleges that it had thirty (30) days from the lapse of the one hundred eighty (180)-day period reckoned from **November 4, 2016** or until June 3, 2017,

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[5] Par. 11, Petition for Review, CTA Docket, p. 13; Exhibit P-3, CTA Docket, pp. 189-190.
[6] Par. 12, Petition for Review, CTA Docket, p. 13; Exhibit P-5, CTA Docket, pp. 198-199.
[7] Par. 13, Petition for Review, CTA Docket, p. 13; Exhibit P-4, CTA Docket, pp. 191-197.
[8] Par. 14, Petition for Review, CTA Docket, p. 13; Exhibit P-6, CTA Docket, p. 200.
[9] BIR Records, p. 251.
[10] Par. 16, Petition for Review, CTA Docket, p. 13; Exhibit P-7, CTA Docket, pp. 201-203.
[11] Id.; Exhibit P-8, CTA Docket, p. 204.

within which to file a Petition for Review with the Court of Tax Appeals (CTA). According to petitioner, since June 3, 2017 fell on a Saturday, it had until June 5, 2017, the next working day, within which to file its Petition for Review. Thus, petitioner claims that the filing of its Petition for Review on June 2, 2017 was made within the reglementary period provided for by law.[12]

On September 25, 2017, respondent filed his Answer[13] with the following special and affirmative defenses: (i) the applicable prescriptive period in this case is ten (10) years pursuant to Section 222 of the NIRC of 1997, as amended, in view of petitioner's failure to declare its correct taxable income and VAT in its returns, thus, making its returns false; (ii) petitioner is estopped from questioning the validity of the Waivers it executed; (iii) petitioner's payment of VAT and EWT shows a positive act which proves its admission of its own tax liabilities for taxable year 2011; (iv) petitioner is not exempt from income tax since Presidential Decree (PD) No. 1955 withdrew all exemptions from any preferential treatment in the payment of duties, taxes, fees, imposts, and other charges granted to private enterprises and/or persons engaged in any economic activity; and, (v) tax assessments are entitled to the presumption of correctness and made in good faith, and the taxpayer has the burden of proving otherwise.

On October 18, 2017, respondent filed his Pre-Trial Brief;[14] while petitioner filed its Pre-Trial Brief[15] on October 23, 2017.

The Pre-Trial Conference was held on October 26, 2017.[16] The parties filed their Joint Stipulation of Facts and Issues[17] on November 17, 2017, and the same was approved in the Pre-Trial Order[18] dated November 28, 2017. The Court also terminated the Pre-Trial in the same Order.[19]

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[12] Pars. 16 to 19, Petition for Review, CTA Docket, p. 13 and 14.
[13] CTA Docket, pp. 116-132.
[14] CTA Docket, pp. 159-163.
[15] CTA Docket, pp. 179-185.
[16] Minutes of the Hearing dated October 26, 2017, CTA Docket, p. 251; Order dated October 26, 2017, CTA Docket, p. 252.
[17] CTA Docket, pp. 253-258.
[18] CTA Docket, pp. 264-267.
[19] Id.

During trial, petitioner presented testimonial and documentary evidence. Petitioner's formally offered exhibits, as contained in its Formal Offer of Evidence,[20] were admitted in the Resolution[21] dated February 14, 2018.

Respondent also presented his testimonial and documentary evidence. Respondent's formally offered exhibits, as contained in Respondent's Formal Offer of Evidence,[22] were admitted in the Resolutions dated October 3, 2018[23] and April 29, 2019,[24] except for Exhibit "R-4" due to respondent's failure to comply with the requisites for their admissibility in evidence.

On May 20, 2019, respondent filed a Tender of Excluded Evidence[25] praying that Exhibit "R-4" be attached to and made part of the records of the case. The Court noted respondent's Tender of Excluded Evidence in the Resolution[26] dated May 24, 2019.

In view of the posting of Memorandum For the Petitioner[27] on July 15, 2019, and respondent's failure to submit his memorandum despite the period given,[28] the case was submitted for decision on July 29, 2019.[29]

ISSUES[30]

The issues for consideration of the Court, as stipulated by the parties, are the following:

1. Whether petitioner has legal and factual basis in protesting the validity of the assessment for deficiency taxes for taxable year 2011;

[20] CTA Docket, pp. 270-273.
[21] CTA Docket, pp. 281-282.
[22] CTA Docket, pp. 294-301.
[23] CTA Docket, pp. 310-311.
[24] CTA Docket, pp. 350-357.
[25] CTA Docket, pp. 378-406.
[26] CTA Docket, p. 365.
[27] CTA Docket, pp. 545-583.
[28] Records Verification dated June 25, 2019, CTA Docket, p. 373.
[29] CTA Docket, p. 409.
[30] Joint Stipulation of Facts and Issues, CTA Docket, pp. 253-254.

2. Whether or not electric cooperatives are revenue neutral and are permanently exempt from income tax;

3. Whether or not respondent's right to collect from petitioner the alleged deficiency taxes for taxable year 2011 has already prescribed; and,

4. Whether or not Revenue Memorandum Circular No. 74-2013 can be given any retroactive effect.

THE COURT'S RULING

Before delving into the merits of the case, the Court must first determine whether petitioner filed its Petition for Review within the prescribed period.

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner upon which a taxpayer may protest an assessment, *viz.*:

> "SECTION 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within (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.
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> 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."

Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, implements Section 228 of the NIRC of 1997, as amended. Section 3.1.4 thereof provides:

> "3.1.4 **Disputed Assessment.** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> (i) **Request for reconsideration** — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> xxx
>
> **For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.** The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. xxx.
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> xxx
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> If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) **elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision**. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
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> 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; 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) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
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> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
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> **If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest**, the taxpayer may either: (i) **appeal to the CTA within thirty (30) days from after 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.
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> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other." (Boldfacing supplied)

A taxpayer has four (4) options after the filing of a protest to the FLD and FAN, depending on whether there was action or inaction on the part of the CIR or his authorized representative, *viz.*:

1. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR or the CTA within thirty (30) days from receipt of the whole or partial denial of the protest;

2. If the protest is wholly or partially denied by the CIR himself, the taxpayer may appeal to the CTA within thirty (30) days from receipt of the whole or partial denial of the protest;

3. If the CIR's authorized representative fails to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within thirty (30) days from the lapse of the 180-day period; or,

4. If the CIR's authorized representative wholly or partially denies the protest within 180 days and the taxpayer (instead of appealing to the CTA) appeals to the CIR, the CIR has the remaining of the 180 days within which to act, failing which, the taxpayer may either await the decision of the CIR or elevate the inaction to the CTA, within thirty (30) days from receipt of the CIR's decision or from the lapse of the from submission of the required supporting documents in support of the protest.

In this case, petitioner opted to appeal the inaction of the CIR on its Letter dated November 3, 2016, filed on November 4, 2016, wherein it requested for a reconsideration of the denial by OIC-Regional Director Sabariaga of its protest.[31]

Petitioner proceeds on the premise that it had thirty (30) days from the lapse of the 180-day period reckoned from November 4, 2016 or until June 3, 2017, within which to file a Petition for Review with the CTA. Petitioner posits that since June 3, 2017 fell on a Saturday, it had until June 5, 2017, the next working day within which to file its Petition for Review. Thus, petitioner claims that the filing of its Petition for Review on June 2, 2017 was well within the reglementary period provided for by law.

The Court finds petitioner's proposition bereft of merit.

Section 228 of the NIRC of 1997, as amended, provides for a total of 180 days only for the CIR and his authorized representative to decide petitioner's protest. There is nothing in Section 228 of the NIRC of 1997, as amended and RR No. 12-99, as amended by RR No. 18-13, which provides for a separate 180-day period for the CIR's representative to act on the protest and another 180-day period for the CIR to decide the appealed decision of his authorized representative.

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[31] *Supra*, Note 11.

A plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99, as amended, reveals that there is only **one (1) "180-day period"** to speak of which shall be counted <u>from the date of submission of the relevant supporting documents and not from the date when the decision of the CIR's authorized representative was appealed to the CIR</u>.

Records show that petitioner received the FLD and FAN on June 24, 2016. On July 22, 2016, petitioner filed a protest letter to the FLD and FAN. On September 19, 2016, petitioner submitted all the relevant documents in support of its protest. Thus, the CIR's authorized representative had 180 days from September 19, 2016 or until March 18, 2017 to decide on the protest.

On September 28, 2016 (or on the 8th day from the submission of the relevant supporting documents on September 19, 2016), OIC-Regional Director Sabariaga already rendered a decision which was received by petitioner on October 7, 2016. **Petitioner elevated its protest to the CIR on <u>November 4, 2016</u>**. When respondent elevated its protest, the CIR had the remaining 134 days of the 180-day period or until March 18, 2017 within which to decide the protest. From March 18, 2017 (the 180th day), petitioner had thirty (30) days or until April 17, 2017 to appeal to the CTA, if it so desires, **<u>or</u>** await the final decision of the CIR himself and appeal said CIR's final decision to the CTA within thirty (30) days from receipt thereof. **Respondent neither filed an appeal to the CTA within thirty (30) days from the lapse of the 180-day period on March 18, 2017 nor did it await the decision of the CIR himself**.

Instead, petitioner mistakenly counted a new period of 180 days from **November 4, 2016** for the CIR to decide on the appealed decision of his authorized representative. Petitioner erroneously believed that it had thirty (30) days from the lapse of the 180-day period reckoned from November 4, 2016 or until June 3, 2017, within which to file a Petition for Review with the CTA. Accordingly, petitioner filed its Petition for Review on June 2, 2017.

When the decision of the CIR's authorized representative was appealed to the CIR, **the running of the 180-day period remained to commence from September 19, 2016, the date when respondent submitted the relevant supporting documents in support of its protest;** the 180-day period was not interrupted nor tolled when petitioner appealed the decision of the CIR's authorized representative to the CIR.

To emphasize, petitioner opted to appeal the CIR's inaction to the CTA, yet it filed its Petition for Review only on June 2, 2017 or **forty-four (44) days late, the last day of filing the Petition for Review being April 17, 2017**.

Since the present Petition for Review was filed way beyond the thirty (30)-day reglementary period to appeal, the CTA was deprived of jurisdiction to take cognizance of the case. Thus, the Court cannot decide the case on the merits[32] as the only power left with it is to dismiss the case.

It is well-settled that perfection of 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 statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[33] The thirty (30)-day period within which to file an appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction.[34]

WHEREFORE, premises considered, the Petition for Review filed on June 2, 2017 by petitioner Nueva Ecija II Electric Cooperative, Inc.- Area 2 is hereby **DISMISSED** for lack of jurisdiction.

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[32] Nippon Express (Philippines) Corp. vs. CIR, G.R. No. 185666, February 4, 2015.
[33] CIR vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.
[34] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice