REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BENGUET ELECTRIC COOPERATIVE, INC. (BENECO), represented by GERARDO P. VERZOSA, General Manager,
Petitioner,

- versus -

THE COMMISSIONER ON INTERNAL REVENUE,
Respondent.

CTA Case No. **9967**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 2 4 2024 10:27 Am

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Benguet Electric Cooperative, Inc.'s (**petitioner**'s/**BENECO**'s) "Motion for Reconsideration"[1] (**MR**) filed, through registered mail, on 16 October 2023.[2] Respondent Commissioner of Internal Revenue (**respondent**'s/**CIR**'s) "Comment/Opposition" (**Comment**) thereto was filed on 20 November 2023.[3]

In the MR, petitioner seeks the reversal of the Decision dated 11 September 2023[4] (**assailed Decision**) which dismissed its Petition for Review for lack of jurisdiction. The dispositive part states:

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1 Division Docket, pp. 451-458.
2 Received by the Court on 23 October 2023.
3 Id., pp. 466-476.
4 Id., pp. 431-450.

> ...
>
> **WHEREFORE**, in view of the foregoing, the Petition for Review filed by petitioner Benguet Electric Cooperative, Inc. (BENECO), represented by Gerardo P. Verzosa, General Manager on 30 October 2018 is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**
>
> ...

Petitioner argues mainly that the issue of jurisdiction was never raised in its Petition for Review nor observed by the respondent in his or her Answer. Citing *Licomcen, Inc. v. Abainza*[5], petitioner avers that the Court should limit itself to the issues stated in the Pre-Trial Order of 22 June 2020.

Petitioner also points out that respondent waived his or her right to determine the timeliness of the filing of the petition since he or she failed to conduct a cross-examination on petitioner's witness. Thus, throughout the court proceedings, the issue of the Court's jurisdiction was never questioned.

Petitioner further insists that its Petition for Review was timely filed. Explaining its previous actions, it posits that the Final Decision on Disputed Assessment (**FDDA**)[6] supplanted the Formal Letter of Demand/[Final] Assessment Notice (**FLD/FAN**).[7] Hence, the Court should consider its appeal to the FDDA[8] as the protest and the filing thereof should be the reckoning point of the counting of the 180-day period under Revenue Regulation (**RR**) No. 18-2013.[9]

Lastly, petitioner claims that there is nothing under Section 228[10] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, that clearly provides for the counting of the 180-day period. With the vagueness of the said provisions, petitioner alleges that it should be granted a fresh period of 180 days from the time it filed its appeal to the FDDA to prevent injustice.

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5 G.R. No. 199781, 18 February 2013.
6 Exhibit "P-5", Division Docket, pp. 265-271.
7 Exhibit "P-3", id., pp. 241-242.
8 Exhibit "P-5A", id., pp. 279-287; BIR Records, pp. 683-692.
9 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
10 **SEC. 228.** *Protesting of Assessment.*

On the contrary, respondent asserts that the Court has no jurisdiction over the case. Quoting the relevant laws and regulations, he or she maintains that petitioner failed to timely file its petition, thus the Court did not err in dismissing the case.

We resolve.

After considering the parties' arguments, We are constrained to deny petitioner's MR for failure to raise any material arguments that should convince us to reverse Our previous findings.

THE COURT OF TAX APPEALS (CTA) CAN RULE ON RELEVANT ISSUES FOR THE ORDERLY DISPOSITION OF THE CASE.

Although the issue of jurisdiction is not raised by the parties themselves, this Court's prerogative to dismiss the case if it is devoid of jusridiction is not dependent on their assertions. It is likewise beyond dispute that jurisdiction is provided by law and not subject to the parties' agreement or stipulation, or the lack of objection thereto.

Similarly, well-settled is the rule that the Court of Tax Appeals (**CTA**) can rule on issues that are not stipulated by the parties for the orderly disposition of the case. In *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation*[11], the Supreme Court emphasized this principle:

> ...
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> In the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, this Court categorically ruled that the Revised Rules of the CTA clearly allowed it to rule on issues not stipulated by the parties to achieve an orderly disposition of the case, thus:
>
> > On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
> >
> > Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may

[11] G.R. No. 214933, 15 February 2022. Italics in the original; citation omitted.

also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

> SECTION 1. *Rendition of judgment.* — x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> ...

THE COUNTING OF THE 180-DAY PERIOD COMMENCES FROM THE FILING OF THE PROTEST AND NOT FROM THE FILING OF AN ADMINISTRATIVE APPEAL.

Petitioner vehemently urges Us to sustain its stance that appeal to the FDDA is the new protest and the counting of the 180-day period shall be reckoned therefrom. Unfortunately, We could not oblige.

The pertinent portions of RR No. 18-2013, as quoted in the assailed Decision, shows that protest is worded differently from an administrative appeal:

> ...
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> 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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> ...
>
> 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.[12]
>
> ...

[12] Underscoring omitted and emphasis supplied.

Taking cue from the above, protest refers to either a request for reconsideration or a request for reinvestigation filed against the FLD/FAN. In contrast, an administrative appeal only refers to a request for reconsideration filed against the FDDA. With these definitions, RR No. 18-2013 is clear that in case of inaction, the counting of the 180-day period commences from the date of filing of the **protest**:

> ...
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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.[13]
>
> ...

We are not also swayed with petitioner's insistence that it should be granted a new period of 180 days. For emphasis, We quote our disquisition in the assailed Decision[14], to wit:

> ...
>
> In a recent case of *Nueva Ecija II Electric Cooperative, Inc. Area II (NEECO II Area II) v. Commissioner of Internal Revenue*, the Supreme Court declared categorically that there is no new or separate 180-day period granted to the CIR to act on the administrative appeal, to wit:
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> > ...
> >
> > As correctly ruled by the CTA *EB*, Section 228 of Republic Act (RA) No. 8424, or the National Internal Revenue Code, as amended (hereafter, Tax Code) unmistakably provides that the one hundred eighty (180)-day period should be reckoned from the "submission of documents," which in this case was on 19 September 2016. Perforce, the statutory 180-day period lapsed on 18 March 2017. From such point, petitioner had thirty (30) days, or until 17 April 2017, to elevate the case to the CTA. However, it filed its Petition only on 2 June 2017, which is beyond the reglementary period provided by the law. Notably, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for alternative courses of action to the taxpayer

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13 Underscoring omitted and emphasis supplied.

14 Supra at note 3. Emphasis and italics in the original; citation omitted.

> upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of respondent Commissioner on Internal Revenue (respondent), including the option of elevating the protest to the respondent himself through a request for reconsideration. **However, nowhere in said provision does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal.** As aptly observed by the CTA *EB*, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law. Necessarily, taxpayers must exercise their rights in the manner and within the periods provided by statute and the pertinent regulations. "**It bears to stress that the perfection of an appeal within the statutory period is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review.**"
>
> ...

...

With the foregoing, We find no new reason to change Our stand on the points raised.

ACCORDINGLY, the "Motion for Reconsideration" filed by petitioner Benguet Electric Cooperative, Inc. (**BENECO**), represented by Gerardo P. Verzosa, General Manager, on 16 October 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice