REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10818

SHOPPE 24 CONVENIENCE STORE COMPANY,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Builing
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

BALDONADO PANIS LOPEZ AND ASSOCIATES
509 FEDMAN Suites
199 Salcedo Street, Legazpi Village
Makati City

GREETINGS:

You are hereby notified by these presents that on **February 3, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 4, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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SHOPPE 24 CONVENIENCE STORE COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10818

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

FEB 03 2025 3:30PM

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*,[1] filed by petitioner Shoppe 24 Convenience Store Company on March 25, 2022, seeking the cancellation and setting aside of the assessments issued against it by respondent Commissioner of Internal Revenue (CIR) for alleged deficiency income tax (IT), value-added tax (VAT), and compromise penalties in the aggregate amount of ₱15,906,239.13 for the taxable year (TY) 2017.

THE PARTIES[2]

Petitioner, Shoppe 24 Convenience Store Company, represented herein by Emerson Ray L. Soriano, is a partnership duly registered and existing under Philippine laws and engaged in the sale of various merchandise or goods. Its principal business address is at Quezon Ave., corner Laya Avenue, Barangay Palao, Iligan City. It may be served with notices, orders, and other processes through its counsel, Baldonado Panis Lopez and Associates, at 509 Fedman Suites, 199 Salcedo St., Legazpi Village, Makati City.

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[1] Docket, pp. 7–45.
[2] *Id.* at 8, Petition for Review, The Parties.

Respondent CIR is the head of the Bureau of Internal Revenue (BIR) which has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC). He may be served with notices, orders, and other processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS AND THE PROCEEDINGS

On September 25, 2018, respondent issued a Letter of Authority (LOA) with Serial No. eLA201200015229/LOA-101-2018-00000161,[3] authorizing Revenue Officer (RO) Ahmad Yadhari Bantuas and Group Supervisor (GS) Mihaima Cosain of Revenue District Office No. 101 – Iligan City, Lanao Del Norte, to examine petitioner's books of accounts and other accounting records for internal revenue taxes covering the period January 1, 2017 to December 31, 2017. The LOA, along with the *Checklist of Requirements/Access to Records Request* dated September 25, 2018, was allegedly served upon petitioner on October 19, 2018.

As petitioner failed to submit the requested documents listed in the *Checklist of Requirements,* respondent reiterated the request through a *First Notice*[4] dated June 17, 2019, which petitioner received on June 28, 2019.

Despite the notice, petitioner still failed to comply. Hence, on July 4, 2019, respondent issued a *Second and Final Notice,*[5] which petitioner complied with by submitting the requested documents on October 15, 2019.[6]

Thereafter, on June 8, 2020, respondent issued a Notice of Informal Conference (NIC),[7] which petitioner received on June 9, 2020. On the same date, petitioner executed a *Waiver of the Defense of Prescription under the Statute of Limitations,*[8] extending the period to assess not later than April 15, 2022.

[3] *Id.* at 537, Exhibit P-4.
[4] *Id.* at 554, Exhibit P-7.
[5] *Id.* at 555, Exhibit P-8.
[6] *Id.* at 557–563, Exhibit P-9.
[7] Exhibit R-5, BIR Records, pp. 922–924.
[8] Exhibit R-6, BIR Records, p. 932.

On November 13, 2020, respondent issued a Preliminary Assessment Notice (PAN), [9] with attached Details of Discrepancy, assessing petitioner for alleged deficiency taxes in the aggregate amount of ₱15,451,059.21, inclusive of interest and penalties. Petitioner allegedly refused to receive the PAN; hence, a constructive delivery to the Barangay Hall of Palao, Iligan, was conducted on December 14, 2020.[10]

On April 6, 2021, respondent issued a Formal Letter of Demand,[11] with attached Details of Discrepancy and Audit Results/Assessment Notices (FLD/FAN), assessing petitioner for deficiency taxes in the aggregate amount of ₱15,906,239.13, inclusive of interest and penalties, for TY 2017. Like the PAN, petitioner allegedly refused to receive the FLD/FAN; hence, a substituted service was allegedly made on May 24, 2021, in the presence of a Barangay Official and two disinterested witnesses.[12]

On June 21, 2021, petitioner filed a *Motion for Reconsideration/Protest* [13] (*Protest*) to the FLD/FAN before Regional Director Esmeralda M. Tabule (RD Tabule).

On July 13, 2021, RD Tabule issued a letter[14] denying petitioner's *Protest*, which petitioner received on August 9, 2021.

Treating RD Tabule's letter as the Final Decision on Disputed Assessment (FDDA), petitioner filed a *Motion for Reconsideration/Administrative Appeal* (Administrative Appeal)[15] before the Office of the CIR on September 2, 2021.

Alleging inaction by respondent on its *Administrative Appeal*, petitioner elevated the case before the Court *via* the instant *Petition for Review* filed on March 25, 2022.

Within the extended period, [16] or on June 3, 2022, respondent filed his *Answer (Re: Petition for Review dated 25 March 2022)*,[17] asking the Court to deny the instant *Petition for Review* for lack of merit. Respondent asserts that petitioner is

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[9] Exhibit R-9, BIR Records, pp. 1001–1006.
[10] Letter dated December 21, 2020, BIR Records, p. 1022.
[11] Exhibit R-11, BIR Records, pp. 1111–1116.
[12] Memorandum dated May 31, 2021, BIR Records, p. 1123.
[13] Docket, pp. 583–600, Exhibit P-15.
[14] *Id.* at 624–625, Exhibit P-16.
[15] *Id.* at 626–644, Exhibit P-17.
[16] *Id.* at 176, Order dated May 5, 2022.
[17] *Id.* at 177–192.

liable for deficiency IT, VAT, and compromise penalties in the amount of ₱15,906,239.13 for TY 2017. He argues that: (1) there was no denial of petitioner's right to due process; (2) the LOA and assessment notices were properly served to petitioner in accordance with existing rules; (3) the ROs who conducted the audit of petitioner were duly authorized to examine the latter's books of accounts and other records; (4) the assessments were made in accordance with prevailing laws and rules; and (5) respondent's right to assess petitioner has not yet prescribed.

On August 16, 2022, in compliance with the Court's directive,[18] respondent submitted the BIR Records,[19] consisting of two folders.

The *Pre-Trial Conference* was set and held on September 12, 2022, during which the Court directed the parties to appear for mediation proceedings before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on October 12, 2022, at 9:30 a.m., pursuant to A.M. No. 11-1-5-SC-PHILJA (*Re: Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*).[20] However, the mediation was unsuccessful, as noted in the *Mediator's Report* dated February 27, 2023,[21] filed before the Court on March 1, 2023.

After the pre-trial conference, the parties filed their *Joint Stipulation of Facts and Issue*[22] (JSFI) on October 12, 2022. In a Resolution dated October 20, 2022, [23] the Court approved the JSFI, terminated the pre-trial, and ordered the issuance of the *Pre-Trial Order.*

On November 22, 2022, the *Pre-Trial Order*[24] was issued, adopting the parties' JSFI and those agreed upon during the *Pre-trial Conference.*

During the trial, petitioner offered the testimonies, by way of Judicial Affidavits, of the following: (1) **Ms. Jeanifer M. Tagupa**,[25] its *Administrative Staff and Cashier*; (2) **Ms. Irene**

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[18] *Id.* at 202–204.
[19] Exhibit R-13.
[20] Docket, p. 451, Minutes of the Hearing.
[21] *Id.* at 515.
[22] *Id.* at 463-464.
[23] *Id.* at 466.
[24] *Id.* at 472–478.
[25] *Id.* at 209–214, Exhibit P-25, Judicial Affidavit dated August 31, 2022.

Mae C. Lacida,[26] its *Purchasing Officer*, and (3) **Mr. Emerson Ray L. Soriano**,[27] its *Managing Partner.*

After presenting all witnesses, petitioner filed its *Formal Offer of Evidence*[28] on February 20, 2023, which the Court partially admitted in a Resolution dated March 9, 2023.[29]

On March 21, 2023, petitioner filed a *Motion for Reconsideration to the Resolution dated 9 March 2023 and/or Tender of Evidence*,[30] to which respondent filed a *Comment and Opposition* on April 11, 2023.[31] Petitioner likewise filed a *Reply to Comment and Opposition*[32] on April 17, 2023.

In a Resolution dated May 18, 2023, the Court partially granted petitioner's *Motion for Reconsideration to the Resolution dated 9 March 2023*, while its *Tender of Excluded Evidence* was noted.

Respondent, in turn, presented his lone witness, RO **Ahmad Yadhari M. Bantuas** (RO Bantuas),[33] who testified by way of a Judicial Affidavit.

Thereafter, on October 6, 2023, respondent filed his *Formal Offer of Evidence*,[34] offering Exhibits R-1 to R-14, inclusive of sub-markings, which the Court admitted in its Resolution dated January 10, 2024.[35]

On March 12, 2024, the case was submitted for decision,[36] considering the *Memorandum for Petitioner*[37] filed on February 21, 2024, and respondent's *Manifestation*[38] filed on February 29, 2024, adopting the arguments in his *Answer* dated June 3, 2022, as his *Memorandum.*

Hence, this Decision.

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[26] *Id.* at 215–220, Exhibit P-26, Judicial Affidavit dated August 31, 2022.
[27] *Id.* at 221–237, Exhibit P-3, Judicial Affidavit dated August 31, 2022.
[28] *Id.* at 502–509.
[29] *Id.* at 523–524.
[30] *Id.* at 530–536.
[31] *Id.* at 692–695.
[32] *Id.* at 697–701.
[33] *Id.* at 425–434, Exhibit R-14, Judicial Affidavit dated August 11, 2022.
[34] *Id.* at 719–724.
[35] *Id.* at 733–734.
[36] *Id.* at 761, Minute Resolution dated March 12, 2024.
[37] *Id.* at 733–754.
[38] *Id.* at 757–759.

THE ISSUE

The lone issue[39] for this Court's resolution is:

> WHETHER OR NOT PETITIONER IS LIABLE TO PAY FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX AND COMPROMISE PENALTY IN THE TOTAL AMOUNT OF PHP15,906,239.13 FOR TAXABLE YEAR 2017.

Petitioner's arguments:

Petitioner argues that the tax assessment is void due to gross violation of due process. *First,* petitioner claims that Section 3.1.6 of Revenue Regulations (RR) No. 18-2013 was not complied with in serving the LOA. According to petitioner, when RO Bantuas sought to serve the LOA through substituted service, there was an apparent failure to comply with the requirement of bringing two disinterested persons other than the employees of the BIR.

Second, petitioner claims that RO Bantuas had no authority to continue with the tax audit. Citing the case of *AFP General Insurance Corp. v. Commissioner of Internal Revenue,*[40] where the Supreme Court allegedly ruled that the RO assigned to an audit is duty-bound to render an investigation report within 120 days from the LOA's issuance, and after the expiration of the said period, the LOA becomes unenforceable, and the RO must seek ratification of his expired authority to validly continue the tax audit. Petitioner asserts that the audit conducted by RO Bantuas is void since it was conducted 120 days after the LOA's issuance.

Third, petitioner asserts that it did not receive the PAN. According to petitioner, while the BIR records show that a PAN was served through substituted service, the fact that it never received such assessment notice deprived it of the opportunity to contest the findings in the PAN. Petitioner adds that the irregularities found in the records surrounding the purported service raise doubt as to the validity of the service of the assessment notice.

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[39] *Id.* at 473, Pre-Trial Order, Stipulation of Issue.
[40] G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division].

Fourth, petitioner claims that the FLD/FAN were improperly served. According to petitioner, the FLD/FAN were served by RO Bantuas with two Barangay Kagawads instead of one Barangay Kagawad and two disinterested persons, as mandated by RR No. 18-2013. Petitioner argues that RO Bantuas' non-compliance with these requirements is tantamount to petitioner's non-receipt of the FLD/FAN or, at the very least, to the absence of constructive receipt thereof.

Fifth, petitioner claims that the tax assessment is not based on established facts and law. Petitioner cites Revenue Memorandum Order (RMO) No. 04-03[41] which requires the verification of amounts reflected in the quarterly report against externally sourced data to ascertain any under-declaration of revenues or overstatement of costs and expenses. Allegedly, the records of the BIR submitted to the Court show no evidence of such consolidation and matching of information with externally sourced data to properly detect under-declaration of revenues or overstatement of costs and expenses. According to petitioner, this circumstance raises doubt as to the validity of the assessment.

Finally, petitioner submits that respondent's authority to assess its quarterly VAT Returns for TY 2017 has prescribed.

Respondent's counter-arguments:

Respondent counters that there was no denial of due process. According to respondent, petitioner cannot be said to have been denied due process since petitioner was given full opportunity to be heard, as evidenced by its ability to file a protest against the assessments.

Respondent asserts that the LOA and assessment notices were served in accordance with existing rules. When petitioner's employees refused to accept the LOA and assessment notices allegedly in a deliberate attempt to evade payment of its deficiency tax liabilities, the ROs resorted to substituted service. This was done in compliance with RMO No. 40-2019[42] and RMC No. 110-2020[43] by having a barangay official and two disinterested witnesses, in the presence of petitioner's

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[41] SUBJECT: Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002.

[42] SUBJECT: Prescribing the Procedures for the Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of Revenue Regulations (RR) No. 18-2013.

[43] SUBJECT: Clarifications on the Proper Modes of Service of an Electronic Letter of Authority.

representative, sign the bottom portion of both the assessment notices and the LOA.

Respondent also refutes petitioner's contention that the ROs who conducted the assessment were not duly authorized, asserting that such claim lacks factual basis. According to respondent, a perusal of the BIR Records for this case shows that the ROs who audited petitioner's deficiency taxes for TY 2017 were properly vested with authority, as evidenced by the LOA bearing number LOA-101-2018-00000161/SN: eLA201200015229, dated September 25, 2018.

With regard to petitioner's protestation that the assessment was not based on established facts or law, respondent submits that this claim has no basis in fact and in law. Respondent asserts that the *Details of Discrepancies* attached to the PAN and FLD, however simple, clearly show the factual and legal bases of the assessment. Further, there were no undisclosed facts or laws to warrant avoidance of the assessment issued pursuant to Section 228 of the NIRC of 1997, as amended.

Respondent further argues that petitioner's claim regarding the prescription of his right to assess the deficiency VAT for TY 2017 is without merit. Respondent asserts that petitioner executed a waiver extending the period to assess until April 15, 2022. Therefore, the right to assess petitioner for TY 2017 has not yet prescribed.

Finally, respondent submits that he correctly assessed petitioner for deficiency IT, VAT, and compromise penalties as stated in the FLD/FAN dated April 6, 2021.

THE COURT'S RULING

Before delving into the merits of the case, the Court shall first determine whether it has jurisdiction over the instant petition.

The Court of Tax Appeals (CTA) lacks authority over the instant case.

The CTA is a court of special and limited jurisdiction. As such, it can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) and (2) of Republic Act (RA) No. 1125,[44] as amended by RA No. 9282,[45] reads:

> Sec. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> 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 of action, in which case the inaction shall be deemed a denial; (*Emphasis supplied*)

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

> 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...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 action as referred to in Section 7(a)(2) herein.** (*Emphasis supplied*)

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only *mandatory* but also *jurisdictional,* and non-compliance with these legal requirements is fatal to a party's cause.[46]

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[44] An Act Creating the Court of Tax Appeals.

[45] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as The Law Creating the Court of Tax Appeals, And for Other Purposes.

[46] *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, July 11, 2012 [Per J. Perez, Second Division].

Based on the above provisions, the CTA has appellate jurisdiction over *decisions*, rulings, or *inactions* by respondent. The appeal must be filed by the party adversely affected within 30 days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action.

Records reveal that petitioner filed the present *Petition for Review* on March 25, 2022, citing the alleged *inaction* of respondent CIR on its *Administrative Appeal* filed on September 2, 2021. The *Petition for Review* states:[47]

> 5. Petitioner filed its Administrative Appeal before the Honorable Office of the Respondent on 02 September 2021. **Respondent had One Hundred Eighty (180) days, or until 01 March 2022, to resolve the said Administrative Appeal.** However, the said period had already lapsed without any action taken on the part of the Respondent.
>
> 6. From 01 March 2022, Petitioner has thirty (30) days therefrom, or until 31 March 2022, to appeal the ***inaction*** of the Respondent. (*Emphasis supplied*)

Section 228 of the NIRC of 1997, as amended, provides the procedure for protesting assessments and seeking remedies for *inaction* or decision on disputed assessments, viz.:

> SEC. 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: ...
>
> . . . .
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> 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.

[47] Petition for Review, Timeliness of the Petition, pars. 5 and 6, Docket, p. 9.

> **If the protest is denied in whole or in part, or is not acted upon <u>within one hundred eighty (180) days from submission of documents</u>, 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. (*Emphasis supplied*)

Correspondingly, RR No. 12-99,[48] as amended by RR No. 18-2013,[49] implements Section 228 of the NIRC of 1997, as amended, Section 3.1.4 thereof provides a detailed procedure for protesting a disputed assessment, to wit:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> . . . .
>
> 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:
>
> (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.
>
> ... ...
>
> If the ***<u>protest</u>*** 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**

[48] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of the National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[49] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

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.

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.

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.

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.**

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. *(Emphasis supplied)*

Based on the foregoing provisions, a taxpayer may pursue the following options after filing a protest to the FLD/FAN:

1. If the protest is denied, in whole or in part, by the CIR's duly authorized representative, the taxpayer may either: (i) appeal to the CTA within 30 days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within 30 days from date of receipt of the said decision;

2. If the protest is denied, in whole or in part, by the CIR, the taxpayer may appeal to the CTA within 30 days from date of receipt of the said decision;

3. If the protest is not acted upon by the CIR's duly authorized representative within 180 days **<u>counted from the date of filing of the protest</u>** in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within 60 days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may appeal to the CTA within 30 days after the expiration of the 180-day period; or

4. If the protest or administrative appeal is not acted upon by the CIR within 180 days **<u>counted from the date of filing of the protest</u>**, the taxpayer may either: (i) appeal to the CTA within 30 days from after the expiration of the 180-day period; or (ii) await the final decision of the CIR on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision.

A plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-1999, as amended, clearly establishes that there is only ***one* 180-day period of inaction.** This period is counted from the date of filing of the protest (in the case of a request for reconsideration) or from the submission of supporting documents (in the case of a request for reinvestigation), **not** from the date the *Administrative Appeal* is filed. There is no provision for a *separate* or *"fresh" 180-day period* for the CIR to act on an *Administrative Appeal* for purposes of computing the 30-day period to appeal to the CTA.

In *Nueva Ecija II Electric Cooperative, Inc. Area II (NEECO II) v. Commissioner of Internal Revenue*,[50] the Supreme Court categorically held that no new or separate 180-day period is granted to the CIR to act on the *Administrative Appeal*, to wit:

> 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 upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of respondent Commissioner of 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 appea**l. 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.**" (*Emphasis supplied; citations omitted*)

In the present case, petitioner filed a *Protest* before RD Tabule on June 21, 2021, disputing the correctness and validity of the FLD/FAN through a request for reconsideration. RD Tabule had 180 days from the filing of the *Protest* on June 21, 2021, or until December 18, 2021, to act on it. On July 13, 2021, long *before* the lapse of the 180-day period, RD Tabule issued the FDDA denying the *Protest*,[51] which petitioner received on August 9, 2021.

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[50] G.R. No. 258101 (Notice), April 19, 2022 [Per Resolution, Third Division].
[51] Petition for Review, Statement of Facts, pars. 16 and 17, Docket, p. 14.

Undoubtedly, there was no *inaction* within the 180-day period since the CIR's duly authorized representative, RD Tabule, denied the *Protest*.

As a result, petitioner had two options: (1) to appeal to the CTA within 30 days from receipt of the FDDA, or (2) to file a request for reconsideration with the CIR within the same period. Petitioner chose the latter and filed an *Administrative Appeal* before the Office of the CIR on September 2, 2021,[52] well within the prescribed period.

However, without waiting for the CIR's final decision on the *Administrative Appeal*, petitioner filed the present *Petition for Review* on March 25, 2022, allegedly due to the CIR's *inaction*. It contends that the 180-day period, counted from the filing of the *Administrative Appeal* on September 2, 2021, lapsed on March 1, 2022, without any action taken by the CIR. Based on this contention, petitioner asserts it had 30 days from March 1, 2022, or until March 31, 2022, to appeal the CIR's inaction to the CTA.[53]

Under these circumstances, the Court finds that petitioner erroneously applied the 180-day period. It incorrectly assumed that respondent had a "fresh"180-day period to act on the *Administrative Appeal*, and that it had 30 days from the lapse of this "fresh" 180 days to file a petition for review with the CTA.

As discussed above and as guided by the Supreme Court's pronouncement in the *NEECO II* case, there is only **one 180-day period of inaction**, counted from the date of filing of the *protest*, **not** from the date of filing of the *Administrative Appeal*. Neither Section 228 of the NIRC of 1997, as amended, nor Section 3.1.4 of RR No. 12-1999, as amended, provides for a **fresh 180-day period** for the CIR to act on an *Administrative Appeal*.

If a taxpayer opts to appeal to the CIR the final decision or FDDA issued by the CIR's duly authorized representative, the taxpayer's only remaining option is to await the CIR's decision. The taxpayer may then elevate the case to the CTA within 30 days from receipt of the CIR's decision.

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52 *Id.*
53 Petition for Review, Timeliness of the Petition, pars. 5 and 6; Petitioner's Pre-trial Brief, Proposals for Stipulation and/or Admission, par. 20.

Given the foregoing, it is evident that petitioner's course of action was procedurally infirm. The only remedy available to it was to await respondent's decision on its *Administrative Appeal* and then appeal that decision before this Court within 30 days from receipt. Since no decision has yet been issued by respondent, the filing of petitioner's *Petition for Review* before the Court is **premature**. Without an appealable decision from the CIR, this Court cannot validly assume jurisdiction over the present *Petition for Review*.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and 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 or nature 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.[54]

WHEREFORE, premises considered, the instant *Petition for Review* filed by petitioner Shoppe 24 Convenience Store Company on March 25, 2022, is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G.DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[54] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015 [Per J. Perez, First Division].

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