REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

NUEVA ECIJA II AREA I ELECTRIC COOPERATIVE, INC., *Petitioner,*	**CTA CASE NO. 9549**
-versus-	Members: ***BAUTISTA,*** *Chairperson* ***FABON-VICTORINO,*** *and* ***RINGPIS-LIBAN,*** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** APR 06 2017 3:48 p.m.

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RESOLUTION

On March 20, 2017, petitioner filed its Petition for Review (With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) ("Petition for Review") with the Court.

A careful perusal of the records shows that on June 17, 2016, petitioner filed its protest[1] to the alleged deficiency income tax assessment for taxable year ("TY") 2011 with the Office of the Regional Director Bureau of Internal Revenue ("BIR") Revenue Region No. 4 seeking reconsideration of the Formal Letter of Demand and Final Assessment Notice ("FLD/FAN") dated May 11, 2016.

The Office of the Regional Director through Atty. Jethro M. Sabariaga, OIC-Regional Director, in a letter dated July 4, 2016 and received by petitioner on July 22, 2016[2], denied the request and indicated that the said letter shall be considered as its final decision on the disputed assessment.

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[1] *Records, CTA Case No. 9549,* pp. 56-57.
[2] *Id.,* at 58-59.

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On August 22, 2016, petitioner filed a Request for Reconsideration[3] of the said denial before the Commissioner of Internal Revenue ("CIR").

Believing that the thirty (30)-day period after the expiration of the one hundred eighty (180)-day period within which the respondent should decide on the protest is about to lapse, and no decision has been received from the respondent, petitioner filed the instant Petition for Review with the Court of Tax Appeals ("CTA").

The instant Petition for Review should be **DISMISSED** for being filed out of time.

Section 228 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")[4] provides for the period within which taxpayers may file their protest against disputed assessments with the BIR, and thereafter, with the CTA, to wit:

> 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: *Provider, 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 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.
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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 said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

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[3] *Records, CTA Case No. 9549,* pp. 60-115.
[4] *Republic Act No. 8424, January 1, 1998.*

In this relation, *Revenue Regulations ("RR") No. 12-1999*[5], which implemented the above *Section 228, 1997 NIRC,* provides:

> 3.1.5 *Disputed Assessment.* - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
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> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which is protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
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> The taxpayer shall submit the required 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, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

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[5] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of 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, September 6, 1999.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.

3.1.6 Administrative Decision on a Disputed Assessment. – The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision.[6]

The above provisions contemplate two scenarios where protest is made: (1) protest to CIR's duly authorized representatives, which

[6] Underscoring ours.

include Regional Directors pursuant to *Section 10*[7], *1997 NIRC,* on assessments originating in the region and district offices within their jurisdiction; and (2) protest to the CIR, on assessments originating within his jurisdiction.

If protest is denied by CIR's duly authorized representative, taxpayers may either: (1) elevate their protest to the CIR within 30 days from receipt of denial; or (2) appeal to the CTA within the same period.

If taxpayers opted to elevate their protest to the CIR, such denial by the duly authorized representative shall not be considered as the final decision on disputed assessment. In which case, the CIR shall decide the protest.

On protests originally filed with the CIR, and the same is denied, taxpayers may either: (1) appeal to the CTA within 30 days from receipt of denial; or (2) request for a reconsideration of said denial. Such motion for reconsideration of CIR's decision will not toll the 30-day period to appeal to the CTA.[8]

In cases of inaction, there are three situations contemplated in the foregoing *Section 228, 1997 NIRC* and *Sections 3.1.5 and 3.1.6, RR No. 12-1999*: (1) inaction by the duly authorized representative; (2) inaction by the CIR on protests originally filed with him; and (3) inaction by the CIR on protests elevated to him by reason of denial by the duly authorized representative.

In cases of inaction by either the duly authorized representative or the CIR on protests originally filed with him, taxpayers may either:

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[7] SEC 10. Revenue Regional Director. - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:

xxx xxx xxx

> (b) Administer and enforce internal revenue laws, and rules and regulations, including the assessment and collection of all internal revenue taxes, charges and fees;
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> (c) Issue Letters of Authority for the examination of taxpayers within the region;
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> xxx xxx xxx.
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> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner.

[8] *Fishwealth Canning Corporation v. Commissioner of Internal Revenue,* G.R. No. 179343, January 21, 2010, 610 SCRA 524.

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(1) appeal to the CTA within 30 days from the lapse of the 180-day period from filing of the protest; or (2) wait for the decision of the CIR or his duly authorized representative on the protest, and appeal such decision to the CTA within the said 30-day period. These options are mutually exclusive and resort to one bars application of the other.[9]

In cases of inaction by the CIR on protests elevated to him by reason of denial by his duly authorized representative, a plain reading of *Section 228, 1997 NIRC,* in relation to *Sections 3.1.5 and 3.1.6, RR No. 12-1999* reveals that the CIR is only given the remaining days of the 180-day period from filing of the protest to the duly authorized representative within which to decide. Thereafter, the protest shall be elevated to the CTA within 30-days from receipt of the decision. If the CIR failed to act on the protest within the 180-day period, the same shall be considered as denial of the protest, and taxpayers may either: (1) appeal to the CTA within 30 days from the lapse of the 180-day period; or (2) wait for the decision of the CIR even beyond the 180-day period, and thereafter appeal such decision to the CTA within 30 days after receipt of such decision.

In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[10], citing *RCBC v. Commissioner of Internal Revenue*[11], the Supreme Court emphasized:

> ... in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.

The above is consistent with *Section 3(A)(2), Rule 4, Revised Rules of the CTA*[12] ("RRCTA"), to wit:

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[9] *RCBC v. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[10] G.R. No. 171251, March 5, 2012, 667 SCRA 455.
[11] G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[12] A.M. No. 05-11-07-CTA, November 22, 2005.

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> SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> > (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) <u>Inaction by the Commissioner of Internal Revenue in cases involving disputes assessments,</u> 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the <u>inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court</u> and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that <u>should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules</u>; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;
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> xxx xxx xxx.[13]

In the instant case, petitioner filed its protest on disputed assessment on June 17, 2016. Counting 180 days from filing of protest,

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[13] Underscoring ours.

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the OIC-Regional Director had until December 14, 2016 to render his decision. On July 22, 2016, petitioner received the OIC-Regional Director's decision denying petitioner's protest, to which petitioner elevated to the respondent by filing a request for reconsideration within 30 days thereof, or on August 22, 2016[14].

When petitioner filed its appeal on August 22, 2016, the CIR had only 114 days, or only until December 14, 2016, which is the last day of the 180-day period from the date of filing of the administrative protest with the OIC-Regional Director, to decide. Thereafter, petitioner had until January 13, 2017 to elevate its claim with the Court. Records disclose that petitioner filed its appeal before the CTA only on March 20, 2017, or 66 days beyond the 30-day period from the lapse of the 180-day period to appeal to the Court. This is upon the belief that respondent had another 180 days to decide on the claim.

Section 228 of the *1997 NIRC, Sections 3.1.5 and 3.1.6, RR No. 12-99,* and *Section 3(A)(2), Rule 4, RRCTA,* provides for only one "180 days" within which the CIR and his duly authorized representative shall decide the protest. The "180-day period" referred therein shall be reckoned from date of "submission of documents," which is within sixty (60) days from the filing of the protest. In case the taxpayer fails to submit relevant supporting documents within the 60-day period, the 180-day period commences to run from the date the protest was filed.

Hence, petitioner erred in counting a "fresh" or "new"180 days from August 22, 2016 within which respondent shall decide on the protest appealed from. When petitioner elevated the protest to respondent, the latter is not given another 180 days to decide. The "180-day"period within which respondent will decide should still be counted from June 17, 2016, or from the time petitioner filed its protest to the OIC-Regional Director.

Clearly, when petitioner filed its appeal before the Court on March 20, 2017, the same is already beyond the period allowed by law, thus rendering the assessment final, executory and demandable.

[14] August 21, 2016 fell on a Sunday.

In *Ker and Company, Ltd. v. The Court of Tax Appeals, et al.,*[15] the Supreme Court held that while the right to appeal a decision of the CIR to the CTA is merely a statutory remedy, the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for being filed beyond the reglementary period.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[15] G.R. No. L-12396, January 31, 1962, 4 SCRA 163.

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