REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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PUBLIC SAFETY MUTUAL BENEFIT FUND, INC., REPRESENTED BY ITS PRESIDENT MARIO A. AVENIDO, Petitioner,	**CTA EB NO. 2198** (CTA AC NO. 214)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
ROSETTE F. LAQUIAN, Acting City Treasurer, San Juan City, Respondent.	***Promulgated:*** JAN 15 2021 3:10 p.m.

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on December 26, 2019 by petitioner Public Safety Mutual Benefit Fund, Inc., represented by its President, Mario A. Avenido, against Rosette F. Laquian, Acting City Treasurer of San Juan City, praying to set aside the Decision dated August 27, 2019[2] and the Resolution dated November 22, 2019[3], both rendered by the Second Division of this Court (Court in Division) in CTA AC No. 214, entitled *"Public Safety*

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[1] EB Docket, pp. 6 to 43.
[2] Penned by Retired Associate Justice Cielito N. Mindaro-Grulla, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Jean Marie A. Bacorro-Villena, EB Docket, pp. 45 to 58.
[3] EB Docket, pp. 61 to 67.

Mutual Benefit Fund, Inc., represented by its President, Mario A. Avenido, Petitioner, versus Rosette F. Laquian, Acting City Treasurer, San Juan City, Respondent", the dispositive portions of which, respectively read as follows:

Decision dated August 27, 2019:

> "**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 **AFFIRMED**.
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> **SO ORDERED.**"

Resolution dated November 22, 2019:

> "**WHEREFORE**, petitioner's **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.
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> 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**.
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> **SO ORDERED.**"

THE FACTS

Petitioner Public Safety Mutual Benefit Fund, Inc. is a non-stock, non-profit domestic corporation organized as a mutual benefit association with business address at No. 318-320 corner 1st and 2nd West Crame Sts., Barangay West Crame, Santolan Road, San Juan City. Petitioner is represented by its President, Mario A. Avenido.

On the other hand, respondent Rosette F. Laquian is the Acting City Treasurer of San Juan City with postal address in Office of the City Treasurer, Pinaglabanan St. corner Dr. P.A. Narciso St. Barangay Corazon de Jesus, San Juan City.

On October 29, 2015, respondent issued Tax Order of Payment (TOP1) assessing petitioner for deficiency local business tax for taxable years 2009 to 2015, amounting to ₱122,108,041.10, inclusive of penalties and interests. The assessment was pursuant to Section 143(f) and 131 of Republic Act No. 7160.

On December 1, 2015, petitioner submitted a *letter* to respondent informing her that petitioner is a mutual benefit association (MBA) pursuant to the Local Finance Circular No. 2-93 dated June 15, 1993 issued by the Bureau of Local Government Finance (BLGF), stating that it is not subject to local business tax.

On December 29, 2015, petitioner filed its protest letter assailing TOP1.

In 2017, respondent issued another TOP (TOP2) dated January 18, 2017, assessing petitioner for deficiency local business tax covering 2009 to 2017, amounting to ₱160,185,097.80, inclusive of penalties and interests.

On January 23, 2018 and January 25, 2018, petitioner received by personal service and by registered mail, respectively, a letter dated September 5, 2017, issued by respondent denying its protest filed on December 29, 2015.

On February 22, 2018, petitioner filed a *Petition* with the Regional Trial Court (RTC) - Branch 160, docketed as Civil Case No. 75377, praying for the cancellation and setting aside of TOP 1 and TOP 2. In the Decision dated October 26, 2018, RTC - Branch 160 denied the appeal for lack of merit. The pertinent and dispositive portions of said Decision state:

> "Neither of the parties point out the local legislation which imposes the tax being protested by appellant. The Court, thus, assumes that a local ordinance exists which imposes the disputed tax.

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The parties are in agreement that the basis of taxation is Section 143 of the Local Government Code (LGC) which empowers a local government unit the authority to impose a tax on "banks and other financial institutions." On the other hand, Section 131 of the LGC, defines the phrasal term "banks and other financial institutions" as including "insurance companies." The appellee considers the appellant as an insurance company because it engages in the business of insurance. There could be no doubt that the appellant has obtained a license to sell insurance from the Insurance Commission. In a general sense, the appellant is an insurance company subject to the taxing power of the appellee pursuant to the LGC.

The appellant, however, takes a tax shield from an administrative issuance of the Bureau of Local Government Finance (BLGF) Local Finance Circular No. 2-93 which defines "insurance companies" as not including mutual benefit associations. The administrative circular, in effect, exempts the appellant from the tax power of the appellee. In other words, the BLGF by the stroke of a pen granted exemption by sheer definition to the appellant.

The appellee takes exception because exemption from taxation could only come from the legislature which exercises the power to tax. The BLGF has no authority to limit the scope of the taxing power conferred by the legislature upon LGU's.

It is basic that a tax exemption to be availed of by a taxpayer must emanate from a clear mandate of the law. For sure, BLGF Local Finance Circular No. 2-93 is not such legal mandate. Thus, the appellee is correct in assessing the appellant of its tax obligations to the LGU pursuant to the pertinent tax ordinance.

WHEREFORE, the appeal is dismissed for lack of merit.

SO ORDERED."

The RTC Decision was received by petitioner on November 23, 2018.

Thus, petitioner filed its *Petition for Review* before the Court in Division on December 19, 2018, entitled *"Public Safety Mutual Benefit Fund, Inc., Represented by its President, Mario A. Avenido, Petitioner, versus Rosette F. Laquian, Acting City Treasurer, San Juan, Respondent"* and docketed as CTA AC No. 214.

On January 30, 2019, respondent filed her *Comment* to the *Petition for Review.*

On March 28, 2019, petitioner's counsel Atty. Rizalina V. Lumbra filed a *Notice of Withdrawal as Counsel*, withdrawing her appearance as counsel of record of petitioner.

On April 1, 2019, petitioner's new counsel, Terencio R. Yumang, Jr. & Associates filed an *Entry of Appearance.* This was noted by the Court in Division in the Resolution dated April 3, 2019.

Respondent filed her *Memorandum* on March 26, 2019; while petitioner filed its *Memorandum* on May 3, 2019. Thus, on May 10, 2019, the Court in Division issued a Resolution submitting CTA AC No. 214 for decision.

On August 27, 2019, the Court in Division rendered the assailed Decision[4] dismissing the *Petition for Review* filed by petitioner for lack of jurisdiction, and ordering the cancellation and setting aside of the Decision dated October 26, 2018 rendered by RTC-Branch 160 in Civil Case No. 75377; and affirming the assessments covering taxable years 2009 to 2017.

On September 12, 2019, petitioner filed its *Motion for Reconsideration (of the Decision promulgated on August 27, 2019)*[5].

Thereafter, on October 11, 2019, petitioner filed a *Verified Motion for Suspension of Collection of Tax*[6], praying that the Court in Division (1) suspend the proceedings of levy, or any collection efforts

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[4] EB Docket, pp. 45 to 58; Division Docket (CTA AC No. 214) – Vol. II, pp. 565 to 578.
[5] Division Docket (CTA AC No. 214) – Vol. II, pp. 579 to 601.
[6] Division Docket (CTA AC No. 214) – Vol. II, pp. 661 to 670.

by respondent or any of its authorized officers; (2) allow the presentation of witness during the hearing of the *Motion*; and (3) dispense with the requirement for petitioner to either deposit the amount claimed by respondent or file a surety bond for not more than double the amount with the Court.

On October 15, 2019, respondent's filed her *Entry of Appearance with Comment (to the Motion for Reconsideration dated September 12, 2019)*[7].

In the assailed Resolution[8] dated November 22, 2019, the Court in Division denied petitioner's *Motion for Reconsideration (of the Decision promulgated on August 27, 2019)* for lack and merit. Likewise, petitioner's *Verified Motion for Suspension of Collection of Tax* was also denied for lack of jurisdiction.

On December 12, 2019, petitioner filed with the Court *En Banc* a *Motion for Extension of Time to File Verified Petition for Review (Pursuant to Rule 8, Sec. 3(b) of the Revised Rules of the Court of Tax Appeals),*[9] praying for an additional period of fifteen (15) days from December 13, 2019, or until January 2, 2020[10], within which to file a *Verified Petition for Review.*

The Court *En Banc* granted petitioner an extension of fifteen (15) days from December 13, 2019 or until December 28, 2019, within which to file its *Petition for Review.*[11] Petitioner then filed the instant *Petition for Review* before the Court *En Banc* on December 26, 2019.[12]

In the Resolution dated January 22, 2020,[13] respondent was directed to file her comment on the instant *Petition for Review* within ten (10) days from receipt thereof. On February 7, 2020, respondent filed her *Comment (To Petition for Review dated December 19,*

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[7] Division Docket (CTA AC No. 214) – Vol. II, pp. 676 to 685.
[8] EB Docket, pp. 61 to 67; Division Docket (CTA AC No. 214), pp 693 to 699.
[9] EB Docket, pp. 1 to 4.
[10] Should be December 28, 2020.
[11] Minute Resolution dated December 16, 2019, EB Docket, p. 5.
[12] EB Docket, pp. 6 to 43.
[13] EB Docket, pp. 69 to 70.

2019).[14] In the Resolution dated February 24, 2020, the instant case was deemed submitted for decision.[15] Hence, this Decision.

THE ISSUES

Petitioner raises the following grounds in the instant *Petition for Review, to wit*:

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GROUNDS RELIED UPON FOR THE REVIEW

I. The Honorable Court Second Division erred in ruling that Petitioner's right to appeal before the Regional Trial Court the Respondent's denial of the protest on TOP1 has already prescribed.

II. The Honorable Court Second Division erred in ruling that TOP2 has become conclusive and unappealable."[16]

Culled from the foregoing grounds, these are the issues for the resolution of the Court *En Banc:*

1) Whether or not petitioner's right to appeal the assessment before the RTC has already prescribed; and

2) Whether or not the assessment has become conclusive and unappealable.

Petitioner's arguments:

Petitioner argues that its right to appeal the assessment before the RTC has not yet prescribed. According to petitioner, Section 195 of the Local Government Code (LGC) of 1991 should be interpreted in the same manner as Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended; and that the interpretation of the Supreme Court in the case of *Lascona Land Co. vs. Commissioner of*

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[14] EB Docket, pp. 71 to 80.
[15] EB Docket, pp. 82 to 83.
[16] EB Docket, p. 19. MO

Internal Revenue[17] (or Lascona case) may be applied by analogy to the instant case.

Petitioner likewise claims that the case of *China Banking Corporation vs. City Treasurer of Manila*[18] (or China Banking case) is not on all fours with the present case.

In addition, petitioner asserts that TOP2 has not yet become conclusive and unappealable. Allegedly, the assessment was issued arbitrarily and capriciously; and that the same is violative of due process, hence, void.

Petitioner further argues that it is not subject to local business tax under Sections 143(f) and 151 of the LGC since it is a non-stock, non-profit mutual benefit association and not an insurance company.

According to petitioner, respondent's right to assess the subject local business tax for the years 2009 to 2012 has already prescribed.

Finally, petitioner maintains that the prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation.

Respondent's counter-arguments:

Respondent counter-argues that the Court in Division correctly ruled that the right to appeal the assessment before the RTC has already prescribed.

According to respondent, Section 195 of the LGC states in no unambiguous term that the taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed within which to appeal with the court of competent jurisdiction, otherwise, the assessment becomes conclusive and unappealable. After the lapse of the thirty-day period reckoned from February 28, 2016, there is no longer any assessment to be elevated on appeal as the said assessment had already become conclusive and unappealable.

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

Respondent likewise maintains that petitioner was rightfully assessed and was accorded due process.

Further, respondent contends that its right to assess and collect business tax from petitioner for the years 2009 to 2012 has not yet prescribed.

THE COURT *EN BANC'S* RULING

The *Petition for Review* is bereft of merit.

The subject assessments have become final, executory and unappealable.

In the assailed Decision, the Court in Division ruled that the subject assessments, TOP1 and TOP2, have both become conclusive and unappealable pursuant to Section 195 of the LGC. In particular, the Court finds that with respect to TOP1, the appeal before the RTC-Branch 160 of Pasig City (San Juan City Station) was filed out of time; while for TOP2, no written protest was filed with the local treasurer.

Petitioner, however, argues that its right to appeal before the RTC has not yet prescribed and insists that the thirty-day period to file its appeal with the RTC should be counted from the receipt of the actual decision. Further, petitioner avers that TOP2 was issued arbitrarily and capriciously, hence, void.

We find petitioner's arguments untenable.

Section 195 of the LGC of 1991 provides for the remedies available to the taxpayer in protesting the assessments of local business taxes, *to wit*:

> "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 cancelling 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).

As may be gleaned from the above provision, the taxpayer has sixty (60) days from receipt of the notice of assessment within which to file its written protest with the local treasurer. The local treasurer is then mandated to act on the protest within a period of sixty (60) days counted from the filing of the protest. In case of denial, the taxpayer shall file its appeal before a court of competent jurisdiction within a period of thirty (30) days from the receipt of the adverse decision.

However, if the local treasurer fails to act on the protest within the prescribed 60-day period, the taxpayer shall institute an appeal before a court of competent jurisdiction within a period of thirty days reckoned from the lapse of the 60-day period within which the local treasurer should decide. It is further provided that the failure of the taxpayer to file a protest with the local treasurer or to appeal the decision or the inaction of the local treasurer, will result to the finality of the local tax assessment.

In the instant case, respondent issued two (2) separate assessments: TOP1[19] dated October 29, 2015, in the amount of ₱122,108,041.10, covering the period from 2009 to 2015; and

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[19] Division Docket (CTA AC No. 214) – Vol. 1, pp. 112 to 113; RTC Records, pp. 151 to 152.

TOP2[20] dated January 18, 2017, in the amount of ₱160,185,097.80, covering the period from 2009 to 2017.

Records reveal that petitioner received TOP1 on November 3, 2015[21]. Thereafter, petitioner filed its written protest against the said assessment on December 29, 2015. Counting sixty (60) days therefrom, respondent had until February 27, 2016, within which to decide on the protest. In view of respondent's failure to act on the subject protest within the mandated 60-day period, such inaction shall be deemed a denial of petitioner's protest. Consequently, petitioner had thirty (30) days from February 27, 2016 or until **March 28, 2016** within which to file an appeal before a court of competent jurisdiction, as shown below:

Date of Receipt of TOP1	**Date of filing of the written protest before the local treasurer**	**End of the 60-day period for the local treasurer to decide on the protest**	**End of the 30-day period to file an appeal before a court of competent jurisdiction**
November 3, 2015	December 29, 2015	February 27, 2016	**March 28, 2016**

However, considering that its *Petition*[22] in Civil Case No. 75377, was filed before RTC-Branch 160 of Pasig City (San Juan City Station) only on February 22, 2018, the same was clearly filed out of time.

As regards TOP 2, there is nothing on record which would show that petitioner filed a written protest thereto. In fact, petitioner admitted that it did not file any written protest to TOP2.[23]

Hence, in view of petitioner's failure to timely file an appeal before the RTC with respect to TOP1; and its failure to file a written protest with the local treasurer relative to TOP2, both assessments have become final, executory and unappealable.

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[20] Division Docket (CTA AC No. 214) – Vol. 1, pp. 191 to 192; RTC Records, pp. 153 to 154.
[21] Division Docket (CTA AC No. 214) – Vol. 1, p. 113.
[22] RTC Records, pp. 1 to 20.
[23] Par. 16, *Memorandum* filed by petitioner in Civil Case No. 75377, RTC Docket, p. 177; Par. 28, *Petition for Review* filed by petitioner in CTA AC No. 214, Division Docket (CTA Case No. 214) - Vol. I, p. 26.

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Petitioner, however, claims that the provision under Section 195 of the LGC is merely directory in nature and should not be strictly applied against the taxpayer. Petitioner further insists that it can still appeal the decision of the local treasurer even if the same was issued beyond the 60-day period to act on petitioner's protest. Relying on the *Lascona case*, petitioner argues that TOP1 did not become final, executory and demandable despite its failure to appeal the inaction of the local treasurer. As regards TOP2, petitioner alleges that the same lacks foundation and should be treated as a naked assessment.

The foregoing contentions deserve scant consideration.

In the *China Banking case*, the Supreme Court recognized that the failure of the local treasurer to act on the protest is tantamount to a "denial due to inaction", *to wit*:

> "The Court, however, is of the view that the period within which the City Treasurer must act on the protest, and the consequent **period to appeal a '<u>denial due to inaction</u>**,' should be reckoned from January 15, 2007, the date CBC filed its protest, and not March 27, 2007. Consequently, the Court finds that the CTA *En Banc* did not err in ruling that CBC had lost its right to challenge the City Treasurer's **'<u>denial due to inaction</u>**.' On this matter, Section 195 of the LGC is clear.
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> Time and again, it has been held that the **perfection of an 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**. At the risk of being repetitious, the Court declares that 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."

Further, in the case of *Team Pacific Corporation v. Josephine Daza*[24], the Supreme Court ruled that the inaction of the local treasurer is appealable to a court of competent jurisdiction, *to wit*:

> "A taxpayer dissatisfied with a **local treasurer's** denial of or **inaction on his protest over an assessment has thirty (30) days within which to appeal to the court of competent jurisdiction**. Under the law, said period is to be reckoned from the taxpayer's receipt of the denial of his protest or the lapse of the sixty (60)-day period within which the local treasurer is required to decide the protest, from the moment of its filing. This much is clear from Section 195 of the Local Government Code, xxx" (Emphasis supplied).

Based on the foregoing jurisprudential pronouncements, it is evident that under Section 195 of the LGC, the failure of the local treasurer to act on the taxpayer's protest within the 60-day period is tantamount to a "denial due to inaction". The taxpayer is mandated to elevate the said "denial due to inaction" to a court of competent jurisdiction, within a period of thirty (30) days reckoned from the lapse of the 60-day period. It bears stressing that the perfection of appeal within the period prescribed under Section 195 of the LGC is not only mandatory but also jurisdictional.

Further, it is relevant to take note of the use of the word **"shall"** in Section 195 of the LGC, as the word **"shall"** underscores the mandatory character thereof. It is a word of command, one which always has or must be given a compulsory meaning, and is generally imperative or mandatory.[25] Thus, contrary to petitioner's stance, the provision under Section 195 of the LGC as well as the period indicated therein are mandatory and not merely directory in nature.

As to petitioner's reliance on the *Lascona case*, the same deserves scant consideration. The *Lascona case* involves the application of Section 228 of the Tax Code as amended, particularly on the period for the CIR to act on a taxpayer's disputed assessment. It is therefore erroneous for petitioner to insist on the application of the said jurisprudence, considering that the present case involves the

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[24] G.R. No. 167732, July 11, 2012.

[25] *Enrique, et al. vs. Enrique, et al.*, G.R. No. 139303, August 25, 2005 citing *Lacson vs. Lacson*, G.R. No. L-23482, August 30, 1968.

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assessment of local business tax under Section 195 of the LGC, and not disputed assessment under Section 228 of the NIRC of 1997.

In sum, considering petitioner's failure to properly observe the procedure set forth under Section 195 of the LGC, the subject assessments have thus become final, executory and unappealable. To be sure, the fact that an assessment has become final, only means that the validity or correctness of the assessment may no longer be questioned on appeal.[26] Since the subject local tax assessments have already become final, petitioner is precluded from questioning the same.

Thus, it becomes unnecessary to determine whether petitioner is liable to pay the subject tax assessments.

Time and again, it has been held that the perfection of an 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.[27] 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.[28] Correspondingly, in view of petitioner's failure to timely file its protest to respondents' tax assessments, the RTC Branch 160 of Pasig City (San Juan City Station) is clearly without jurisdiction to entertain petitioner's Petition in Civil Case No. 75377.

Such being the case, We see no cogent reason to deviate from the findings and conclusions of the Court in Division in dismissing CTA AC No. 214 for lack of jurisdiction.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated August 27, 2019 and Resolution dated

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[26] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,* G.R. No. 169225, November 17,2010.

[27] *China Banking Corporation vs. City Treasurer of Manila*, G.R. No. 204117, July 1, 2015.

[28] *Ibid.*

November 22, 2019, both rendered by the Court in Division in CTA AC No. 214 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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