REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1796** (CTA Case No. 9240)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
CAPITOL STEEL CORPORATION, Respondent.	***Promulgated:*** MAY 23 2019 3:21 p.m.

x - x

DECISION

UY, *J*.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue on February 28, 2018 against Capitol Steel Corporation,[1] praying for the reconsideration and setting aside of the Decision dated October 26, 2017[2] and the Resolution dated February 7, 2018[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9240, entitled "*Capitol Steel Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively

[1] EB Docket, pp. 1 to 19.

[2] Penned by retired Associate Justice Caesar A. Casanova, and concurred by Associate Justice Juanito C. Castañeda, Jr.; Associate Justice Catherine T. Manahan entered a Dissenting Opinion; EB Docket, pp. 21 to 52; Division Docket (CTA Case No. 9240), pp. 226 to 257.

[3] Penned by retired Associate Justice Caesar A. Casanova, and concurred by Associate Justice Juanito C. Castañeda, Jr., and Associate Justice Catherine T. Manahan, EB Docket, pp. 53 to 57; Division Docket (CTA Case No. 9240), pp. 281 to 285.

read as follows:

<u>Decision dated October 26, 2017</u>:

> "**WHEREFORE,** premises considered, the Petition for Review is **GRANTED.** Accordingly, respondent's Revised Final Decision on Disputed Assessment imposing upon petitioner capital gains tax in the amount of ₱18,407,314.17 and documentary stamp tax (DST) in the amount of ₱4,639,238.01, is **CANCELLED.**
>
> **SO ORDERED.**"

<u>Resolution dated February 7, 2018</u>:

> "**WHEREFORE,** premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 26 October 2017),** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Commissioner of Internal Revenue is the duly appointed Commissioner of the Bureau of Internal Revnue (BIR) who 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) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.

On the other hand, respondent Capitol Steel Corporation is a corporation organized and existing under the laws of the Philippines, with principal office address at No. 300 Quirino Highway, Baesa, Quezon City.

On June 10, 2009, respondent received the *Letter of Authority* (LOA) No. 2008 00033456 dated June 9, 2009 issued by Zenaida G. Garcia, Officer-in-Charge, Assistant Commissioner of Internal Revenue (OIC-ACIR) of the Large Taxpayers Service, authorizing Revenue Officers (RO) Zenaida Paz, Ma. Salud Maddela, Rogelio Gonzales and Esterlina Aloy of the Large Taxpayers Audit and

Investigation Division I, to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2008.

Respondent received, on January 31, 2011, a *Preliminary Assessment Notice* (PAN) dated January 4, 2011 signed by OIC-ACIR Zenaida G. Garcia, informing respondent of its alleged tax deficiencies for income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefit tax (FBT), capital gains tax (CGT) and documentary stamp tax (DST).

On April 25, 2011, respondent received a *Formal Letter of Demand* (FLD) dated April 11, 2011 for deficiency income tax, VAT, EWT, WTC, FBT, CGT, and DST.

Subsequently, on May 24, 2011, respondent filed a protest to the FLD through the letter dated May 23, 2011.

On June 3, 2015, respondent received the *Final Decision on Disputed Assessment* (FDDA) issued by the OIC-ACIR of the Large Taxpayers Service, Nestor S. Valeroso, assessing it for tax deficiency income tax, VAT, WTC, FBT, CGT, and DST.

Thereafter, on July 2, 2015, respondent filed for reconsideration on the FDDA addressed to OIC-ACIR Valeroso. On October 30, 2015, respondent submitted a supplemental explanation/ reconsideration through the letter dated October 29, 2015.

On December 15, 2015, respondent received an undated *Revised FDDA* issued by OIC-Assistant Commissioner Valeroso, assessing it for CGT in the amount of ₱18,407,314.17, and DST in the amount of ₱4,639,238.01. The BIR assessed respondent of CGT on the ₱116,563,500.00 paid by Phividec Industrial Authority (Phividec), pursuant to Section 4 of Republic Act (RA) No. 8974, for the expropriation of the latter's property located in the Municipality of Tagoloan, Misamis Oriental. The said amount, initially deposited in bank escrow accounts, was later withdrawn by respondent in 2008.

Thus, on January 14, 2016, respondent filed a *Petition for Review* before the Court in Division entitled: *"Capitol Steel*

Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent". The case was docketed as CTA Case No. 9240.

Petitioner CIR filed his *Answer* on April 5, 2016, interposing, among others, certain special and affirmative defenses, which include: that the assessment has attained finality, by operation of law; and that respondent is liable for the assessed CGT and DST.

The case was set for Pre-Trial Conference for CTA Case No. 9240 on May 12, 2016. Respondent's Pre-Trial Brief was filed on May 6, 2016, while that of petitioner was filed on May 10, 2016. While the parties filed their *Joint Stipulation of Facts and Issues* on June 23, 2016 which was approved by the Court in Division in its Pre-Trial Order dated June 28, 2016.

During trial, respondent presented the following witnesses: 1) Dorothy Vallesteros, and 2) Vanessa Bautista.

Thereafter, respondent filed its *Formal Offer of Evidence* on September 14, 2016. In the Resolution dated October 5, 2016, the Court in Division admitted all exhibits of respondent.

For his part, counsel for petitioner manifested that he will no longer present evidence during the hearing on October 5, 2016; but the parties will be submitting a *Supplemental Stipulation of Facts*. Hence, the *Supplemental Stipulation of Facts* was filed on October 11, 2016 which was approved by the Court in its Resolution dated October 14, 2016.

On November 17, 2016, respondent filed its *Memorandum*, while the petitioner filed his *Memorandum* on November 21, 2016. Thereafter, the Court in Division resolved to submit CTA Case No. 9240 for decision on November 24, 2016.

On October 26, 2017, the Court in Division rendered the assailed Decision,[4] granting respondent's *Petition for Review*. Consequently, on November 10, 2017, petitioner filed a *Motion for Partial Reconsideration (Re: Decision promulgated 26 October*

---

[4] EB Docket, pp. 21 to 48; Division Docket (CTA Case No. 9240), pp. 226 to 253.

ρ

2017),[5] to which respondent filed its *Comment (On "Motion for Partial Reconsideration" dated 10 November 2017),* filed on December 4, 2017.[6] On February 7, 2018, the Court in Division promulgated the assailed Resolution,[7] denying petitioner's *Motion for Partial Reconsideration*.

Subsequently, on February 28, 2018, petitioner filed the instant *Petition for Review.*[8]

In the Resolution dated April 16, 2018, the Court *En Banc* ordered respondent to file its *Comment* on the instant *Petition for Review,* within ten (10) days from receipt thereof. However, respondent failed to file the said *Comment.*[9]

On June 21, 2018, the instant case was submitted for decision.[10]

Hence, this Decision.

ASSIGNMENT OF ERRORS

Petitioner assigns the following errors supposedly committed by the Court in Division, to wit:

> "I.
>
> WHETHER OR NOT THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE ASSESSMENT HAS NOT YET ATTAINED FINALITY."
>
> II.
>
> WHETHER OR NOT THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT PETITIONER IS NOT LIABLE TO PAY THE ASSESSED

---

[5] Division Docket (CTA Case No. 9240), pp. 260 to 271.
[6] Division Docket (CTA Case No. 9240), pp. 275 to 278.
[7] EB Docket, pp. 53 to 57; Division Docket (CTA Case No. 9240), pp. 281 to 285.
[8] EB Docket (CTA EB No. 1796), pp. 1 to 19.
[9] Records Verification dated May 30, 2018 issued by the Judicial Records Division of this Court, EB Docket, p. 71.
[10] Resolution dated June 21, 2018, EB Docket, pp. 73 to 74.

CAPITAL GAINS TAX AND DOCUMENTARY STAMP TAX."[11]

Petitioner's arguments:

Petitioner argues that contrary to the ruling in the assailed Decision, the assessment has attained finality, by operation of law.

According to petitioner, respondent's protest dated July 2, 2015 through a request for reconsideration was addressed, not to petitioner, but to the Assistant Commissioner of the Large Taxpayers Service. Petitioner avers that respondent had the option to either appeal before this Court or to elevate its protest to petitioner; that the subsequent recourse of respondent to elevate its protest/request for reconsideration to the ACIR is not sanctioned the pertinent rules and regulations by the BIR; and that the remedy of respondent is to elevate its protest to petitioner or appeal to this Court.

Petitioner also asserts that respondent is liable for the assessed CGT and DST; that there was no conveyance of real property in this case; that the just compensation cannot be lower than the zonal value as provided by the BIR; and that the collection of the CGT based on the zonal value of ₱116,563,500.00 is proper.

Lastly, petitioner is of the view that the determination of just compensation is not within the functions of this Court as provided under RA No. 9282.

THE COURT *EN BANC*'S RULING

The Court *En Banc* deems it proper to resolve first an antecedent and vital issue which is necessary in the orderly disposition of the instant case pertaining to whether the revenue officer(s) who examined respondent was authorized by petitioner or his duly authorized representative through an LOA.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), reads as follows:

---

[11] EB Docket, p. 3.

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. – *Rendition of judgment* – xxx
>
> **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.**" *(Emphasis supplied)*

Based on the said provision, this Court is not limited to resolve only the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case. Such power of this Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[12] *viz.*:

> **"On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> 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 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*. – xxx
>
> 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 above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA <u>even though the parties had not raised the same in their pleadings or</u>**

---
[12] G.R. No. 183408, July 12, 2017.

> **<u>memoranda</u>.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis and underscoring supplied)*

Thus, the above-stated issue raised by this Court *En Banc* may be resolved by the latter.

The Supreme Court, in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[13] (*Medicard* case), made clear the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
>> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –*
>>
>> (A) Examination of Return and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x

---

[13] G.R. No. 222743, April 5, 2017.

Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[14] the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.** (Emphasis and underlining ours)

xxx xxx xxx

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physicially kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records**

---

[14] 649 Phil. 519 (2010).

> **but only on whether a taxpayer is being subject to examination.**
>
> xxx xxx xxx
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void**." *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, revenue officers must be authorized by an LOA in order for them to validly examine the books of accounts and other accounting records of a taxpayer. In the absence thereof, the tax assessments issued by the BIR against such taxpayer shall be void.

Relative thereto, Section 13 of the NIRC of 1997 provides as follows, to wit:

> "SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring supplied)*

On the basis thereof, it is clear that an LOA must have been issued in favor of an RO, in order for such officer to examine taxpayers and to perform tax assessment and collection functions.

In the instant case, records show that LOA No. 2007 00035335 was issued on June 26, 2008[15] by Romulo L. Aguila, Jr., Head Revenue Executive Assistant of the BIR's LTS – Regular Large Taxpayer, authorizing ROs J. Hernandez, S. Reyes, M. Bautista, J. Quevedo, J. Aguila, A. Maniego, of the Large Taxpayers Audit & Investigation Division I, to examine respondent's books of accounts and other accounting records for VAT for the period from January 1, 2008 to March 31, 2008, to be supervised by Group Supervisor (GS) Glorializa G. Samoy.

Subsequently, LOA No. 2008 00033456 was issued on June 9, 2009[16] by OIC-ACIR Zenaida G. Garcia authorizing ROs Zenaida Paz, Ma. Salud Maddela, Rogelio Gonzales, Esterlina Aloy, of the Large Taxpayers Audit & Investigation Division I, to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2008, to be supervised by GS Victoria L. Evangelista.

However, it is noteworthy that RO William F. Sundiam, the person who made the recommendation dated December 30, 2010 for the issuance of a PAN against respondent,[17] and the recommendation dated April 11, 2011 for the issuance of the subject FAN,[18] was not named under LOA No. 2007 00035335, nor under LOA No. 2008 00033456.

As a corollary, nowhere in the records of the case would show that an LOA was issued, specifically designating RO Sundiam to examine and audit the books of accounts and other accounting records of respondent for taxable year 2008.

Prior to the issuance of the said PAN and FAN, the supposed authority of RO Sundiam can only be traced from **Memorandum Referral No. D-LOA-0810-0008** dated August 12, 2010,[19] issued by OIC-Chief for the LT Regular Audit Division I, Edralin M. Silario, referring the dockets of the case to the former, purportedly pursuant to LOA No. 00035335 dated June 25, 2008 and LOA No. 00033456

---

[15] BIR Records, p. 1.
[16] Exhibit "P-1", Division Docket (CTA Case No. 9240), p. 38; BIR Records, p. 238.
[17] BIR Records, pp. 694 to 699.
[18] BIR Records, p. 740.
[19] BIR Records, p. 519.

M

dated June 9, 2009, for the continuance of investigation on all internal revenue taxes for the taxable year 2008.

Hence, since no LOA was issued in his favor, RO Sundiam cannot be considered as legally authorized to conduct an examination of respondent's books of accounts and other accounting records of respondent for taxable year 2008.

Correspondingly, the subject tax assessments, which came about as a result of the examination of respondent's books of accounts and accounting records for taxable year 2008 by an RO who are not authorized through an LOA, are void. Thus, contrary to the assertion of petitioner, the subject tax assessments cannot attain finality. For being void, the same bears no valid fruit.[20]

Correspondingly, it becomes unnecessary to address the other issues raised by petitioner in the instant *Petition for Review.*

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

---

[20] Refer to *Commissioner of Internal Revenue vs. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006; *Commissioner of Internal Revenue vs. BASF Coating+Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014; and *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CAPITOL STEEL CORPORATION,
Respondent.

CTA EB NO. 1796
(CTA Case No. 9240)

Members:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:
MAY 23 2019 3:32 p.m.

x- x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia* of my esteemed colleague, the Honorable Associate Justice Erlinda P. Uy, denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) for lack of merit.

A perusal of the records reveals the following relevant factual antecedents that eventually led to the filing by Capitol Steel Corporation (CSC) of the Petition for Review before the Court in Division:

- April 25, 2011 - CSC received a Formal Letter of Demand (FLD) dated April 11, 2011.

- May 24, 2011 – CSC filed a protest to the FLD.

- June 3, 2015 – CSC received the Final Decision on Disputed Assessment (FDDA) dated June 3, 2015 issued by Nestor S. Valeroso, OIC-Assistant Commissioner of the Large Taxpayers Service.

- July 2, 2015 – **CSC filed a request for reconsideration of the original FDDA addressed to the same OIC-Assistant Commissioner Valeroso** (instead of elevating it to the CIR).

- October 30, 2015 – CSC submitted a supplemental explanation/reconsideration to OIC-Assistant Commissioner Valeroso.

- December 15, 2015 – CSC received a Revised FDDA signed by Assistant Commissioner Valeroso.

- January 14, 2016 – CSC filed a Petition for Review before the Court of Tax Appeals (CTA), docketed as CTA Case No. 9240, appealing the Revised FDDA.

After carefully perusing the records of the case, I adopt the position taken by Honorable Associate Justice Catherine T. Manahan in her Dissenting Opinion to the Court in Division's assailed Decision where she aptly pointed out that it is the original FDDA received by CSC on June 3, 2015 which should be considered as the decision of the CIR's duly authorized representative. Thus, upon receipt of the original FDDA on June 3, 2015, the options left to CSC were to either file an appeal to the CTA <u>**or**</u> file a motion for reconsideration with the CIR himself, within 30 days from June 3, 2015.

These remedies are explicitly provided in Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, implementing Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, *viz.*:

> "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:
>
> xxx
>
> **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.**" (Boldfacing supplied)

d

In the very recent case of ***Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.***,[1] the Supreme Court, citing Section 228 of the NIRC of 1997, as amended and Section 3.1.5 (now Section 3.1.4) of RR No. 12-99, reiterated that a taxpayer has only three (3) options to dispute an assessment, *viz.*:

> "It is clear from the said provisions of the law that a protesting taxpayer like V.Y. Domingo has only three options to dispute an assessment:
>
> 1. **If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest**;
>
> 2. **If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest**;
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period." (Boldfacing supplied)

Indubitably, the remedies available to CSC upon receipt of the original FDDA were to: (i) file a Petition for Review with the CTA; **<u>or</u>** (ii) elevate the protest through a request for reconsideration (an administrative appeal of the FDDA) with the Office of the Commissioner of Internal Revenue, within thirty (30) days from receipt of the original FDDA.

Considering that CSC received the original FDDA on June 3, 2015, CSC should have filed its appeal with the CTA within thirty (30) days from its receipt thereof or on or before **July 3, 2015**. The Petition for Review before the Court in Division was filed by CSC only on **January 14, 2016**, thus, the same was clearly filed beyond the thirty (30)-day reglementary period. The filing of a motion for reconsideration of the original FDDA with the CIR's duly authorized representative did not toll the 30-day period within which to appeal the original FDDA to the CTA or to the CIR himself; **in truth, the purported motion for reconsideration of the original FDDA with the CIR's duly authorized representative is not a remedy authorized by Section 228 of the NIRC of 1997, as amended, nor by RR No. 12-99, as amended by RR No. 18-13. For CSC's failure to appeal the original FDDA to the CTA or move for its**

---

[1] G.R. No. 221780, March 25, 2019.

reconsideration before the Office of the CIR himself, the original FDDA has become final and executory.

Otherwise stated, for failure of CSC to timely appeal the original FDDA with the CTA, the Court in Division was deprived of its jurisdiction to act on the Petition for Review, much more, **to decide the case on the merits.**[2] **The only power left with the Court in Division was to dismiss the case.**

It is well-settled that **perfection of appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and **precluding the appellate court from acquiring jurisdiction over the case.** The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[3]

All told, I **VOTE** to: (i) **GRANT** the present Petition for Review filed by the Commissioner of Internal Revenue; (ii) **DISMISS** the Petition for Review filed by Capitol Steel Corporation in CTA Case No. 9240 for lack of jurisdiction; and, (iii) **DECLARE** as final and executory the original Final Decision on Disputed Assessment dated June 3, 2015 and received by Capital Steel Corporation on the same date.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[2] Nippon Express (Philippines) Corp. vs. CIR, G.R. No. 185666, February 4, 2015.
[3] CIR vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.