REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BOTTLERS EMPLOYEES SAVINGS AND LOAN ASSOCIATION (BESALA), Petitioner,	**CTA CASE NO. 11045**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 15 2024 8:10 am

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RESOLUTION

Before this Court is respondent's **Motion to Dismiss**, which was incorporated in his *Answer* filed on September 25, 2023, without petitioner's comment despite notice as per Records Verification dated January 8, 2024.

As a special and affirmative defense, respondent prays, among others, that this Petition for Review be dismissed on the ground of lack of jurisdiction.

Respondent contends that petitioner admitted that it received the Final Assessment Notice (FAN) on January 4, 2018 and protested the same on February 2, 2018. Respondent also avers that petitioner admitted that, after receiving the Final Decision on Disputed Assessment (FDDA) dated April 13, 2022, on April 21, 2022, it filed a *Request for Reconsideration* of the FDDA with the respondent Commissioner of Internal Revenue (CIR) on May 19, 2022.

According to respondent, the filing of the present *Petition for Review* on December 14, 2022 before this Court, on the basis that he failed to act on the petitioner's *Motion for Reconsideration* within the one hundred eighty (180) days from the date of its filing, is erroneous.

Respondent further avers that when petitioner received the FDDA on April 21, 2022, it had two options. First was to file a petition for review with this Court within thirty (30) days from receipt of the FDDA; and, second was to file a motion for reconsideration with respondent within a period of thirty (30) days from receipt of the FDDA, if rendered by his duly authorized representative. The availment of one option bars the resort to the other. Respondent believes that when petitioner opted to file a motion for reconsideration of the FDDA, rendered by the Regional Director Maridur V. Rosario on May 19, 2022, it deemed to have opted to wait for his decision.

Respondent also expresses that, when petitioner elevated its protest to him within thirty (30) days from receipt of the final decision of his duly authorized representative, such decision shall not be considered final, executory and demandable, in which case the protest shall be decided by him. Respondent believes that it is only within thirty (30) days from receipt of his final decision that petitioner could file a petition for review before this Court; thus, this Court has no jurisdiction due to the premature filing of the petition.

We find merit in respondent's motion.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, lays down the procedure in protesting an assessment, as follows:

> 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: x x x
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> xxx xxx xxx
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> 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.
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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.

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

In implementing the above provision, Revenue Regulations (RR) No. 12-99,[1] as amended by RR No. 18-2013,[2] was issued. Section 3.1.4 thereof provides:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> xxx xxx xxx
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> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> (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.
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> xxx xxx xxx
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> For requests for reinvestigation, the taxpayer shall submit all relevant supporting 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. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from

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[1] 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.

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

disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

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.

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 <u>date of filing of the protest</u>, 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. (Boldfacing and underlining supplied)

Prescinding from the afore-quoted law and regulations, a taxpayer has four (4) options after the filing of a protest to the Formal Letter of Demand (FLD)/Final Assessment Notice (FAN), depending on whether there was action or inaction on the part of the CIR or his authorized representative, *viz:*[3]

1. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR or the Court of Tax Appeals (CTA) within thirty (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 himself, the taxpayer may appeal to the CTA within thirty (30) days from receipt of the whole or partial denial of the protest;

3. If the CIR's authorized representative fails to act upon the protest within 180 days from the filing of the protest (if the protest is a request for reconsideration) or from submission of the required supporting documents (if the protest is a request for reinvestigation), then the taxpayer may appeal to the CTA within thirty (30) days from the lapse of the 180-day period; or,

4. If the CIR's authorized representative wholly or partially denies the protest within 180 days and the taxpayer (instead of appealing to the CTA) appeals to the CIR, the CIR has the remainder of the 180 days within which to act, failing which, the taxpayer may either await the decision of the CIR or elevate the inaction to the CTA, within thirty (30) days from receipt of the CIR's decision or from the lapse of the 180-day period reckoned from the date of the filing of the protest (if the protest is a request for reconsideration) or from the date of the submission of the required supporting documents in support of the protest (if the protest is a request for reinvestigation).

Settled is the rule that the right to appeal is not a natural right. It is also not 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 law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[4]

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[3] *Segaya vs. Commissioner of the Bureau of Internal Revenue,* CTA EB No. 2526, December 13, 2022.

[4] *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005.

Here, petitioner narrates the antecedent facts of the case in its *Amended Petition for Review* as follows:

> 7. On June 13, 2016, BESALA received a Letter of Authority (LOA) AUDM49/007613/2016 dated June 07, 2016 giving authority [to] Revenue Officer (RO) – Jaime Jr. Mirador / Group Supervisor (GS) – Emmanuel Obsequio of RDO No. 47 – East Makati to examine BESALA's books of accounts and other accounting records for the period from January 01, 2014 – December 31, 2014, attached as "**Annex B**".
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> 8. On September 19, 2016, BESALA received a second and final notice dated September 07, 2016 giving BESALA ten (10) days from the receipt of such letter to submit books of accounts and other accounting records, attached as "**Annex C**".
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> xxx xxx xxx
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> 12. On December 19, 2017, BESALA received a Preliminary Assessment Notice (PAN) dated December 18, 2017 attached as "**Annex G**", assessing BESALA with following deficiency tax inclusive of interest and penalty:

Tax Type	Basic Tax Due	Interest and Penalty	Amount Due
Income Tax	₱19,117,096.16	10,433,220.70	₱29,550,316.88
Percentage Tax	3,992,817.40	3,363,264.96	7,356,082.36
Expanded Withholding Tax	33,371.23	19,858.17	53,229.40
Withholding Tax on Compensation	1,459,849.52	868,710.45	2,328,559.97
Final Withholding Tax	6,055,559.00	7,569,449.35	13,625,008.35
Documentary Stamp Tax	1,372,972.00	824,535.52	2,197,507.52
Compromise Penalty		75,000.00	75,000.00

> of which BESALA has fifteen days (15) or until January 03, 2018 to file a protest pursuant to Revenue Regulation 12-99.
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> 13. On December 29, 2017, BESALA submitted its protest letter including its annexes duly received by the BIR, on the same date, attached as "**Annex H**".
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> 14. On January 05, 2018, BESALA received a Formal/Final Assessment Notice (FAN) dated January 04, 2018 attached as "**Annex I**" reiterating its findings made on the PAN dated December 18, 2017, which BESALA has thirty (30)) days or [until] February 4, 2018 [to] file a protest.
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> 15. On January 29, 2018, BESALA received a letter from the BIR acknowledging the receipt of protest letter to PAN attached as "**Annex J**".
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> 16. On February 02, 2018, BESALA submitted its protest letter including its annexes duly receipt by the BIR on the same date, attached as "**Annex K**".

17. On March 01, 2018, BESALA received a letter from the BIR acknowledging the receipt of the protest letter to FAN, attached as "**Annex L**".

18. On October 01, 2021, BESALA received a Letter of Authority (LOA) AUDM20-047-2021-004361, as a replacement of Letter of Authority No. AUDM49/007613/2016 dated June 7, 2016, for the continuation of audit of tax liabilities for the taxable period January 01, 2014 – December 31, 2014, arising from the re-assignment of the case in view of the transfer of the previous Revenue Officer to another district office and retirement of the previous Group Supervisor, attached as "**Annex M**".

19. On October 08, 2021, BESALA submitted all pertinent documents (e.g. communication letters, transmittal letters and protest letters duly received by the BIR) same was acknowledged by the BIR on the same dated attached as "**Annex M-1**".

20. On April 21, 2022, BESALA received a Final Decision of Disputed Assessment (FDDA) dated April 13, 2022 attached as "**Annex N**" with the following adjusted assessment:

Tax Type	**Basic Tax Due**	**Interest and Penalty**	**Amount Due**
Income Tax	₱17,083,216.36	₱18,174,670.07	₱35,257,886.43
Percentage Tax	3,992,817.40	5,450,469.23	9,443,286.63
Expanded Withholding Tax	8,948.60	10,003.17	18,951.77
Withholding Tax on Compensation		Dropped	
Final Withholding Tax	6,055,559.00	8,282,843.37	14,338,402.37
Documentary Stamp Tax	1,258,814.00	1,414,010.24	2,672,824.24
Compromise Penalty		75,000.00	75,000.00

21. As previously mentioned, on May 19, 2022, BESALA filed with the CIR a Request for Reconsideration (attached as **Annex "O"**) in relation to the Final Decision on Disputed Assessment (FDDA) dated April 13, 2022 issued by Regional Director Maridur V. Rosario, Revenue Region No. 8A-Makati City.

22. **Unfortunately, Respondent CIR failed to act within the required one hundred eighty (180) days from the time BESALA filed its Request for reconsideration.**

23. **Hence, this Petition for Review.** (Boldfacing supplied)

Based on the above facts, petitioner admitted that, after it had received the FDDA on April 21, 2022 issued by the CIR's authorized representative Regional Director Maridur V. Rosario, it filed a motion for reconsideration thereof with the respondent CIR on May 19, 2022 instead of filing a judicial appeal with this Court. Thereafter, believing that there was inaction on the part of the respondent, petitioner filed the instant *Petition for Review* before the Court on December 14, 2022 after the lapse of the 180 days counted from the filing of its motion.

Such action of petitioner is not sanctioned by law.

A careful reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99, as amended, reveals that there is only one (1) "180-day period" to speak of when either the CIR or his/her duly authorized representative may act on the protest against the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD). The 180-day period is reckoned from the date of filing of the protest (if the protest is a request for reconsideration) or from the submission of the relevant supporting documents (if the protest is a request for reinvestigation) and not from the date when the CIR received an appeal on the decision rendered by his authorized representative.

If the CIR or the CIR's authorized representative failed to act on the protest within the 180-day period, then the taxpayer should resort to filing of petition for review before this Court within thirty (30) from the lapse of the said 180-day period. On the other hand, if the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer has to wait for the CIR's decision before elevating its case before this Court.

For emphasis, when a taxpayer opts to file an administrative appeal, the CIR has no separate 180-day period within which to decide the administrative appeal.

The Supreme Court in the case of *Nueva Ecija II Electric Cooperative, Inc. Area II (NEECO II) vs. Commissioner of Internal Revenue*[5] is instructive when it ruled that the CIR has no fresh 180-day period to act on the administrative appeal, to wit:

> [N]otably, **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, <u>nowhere in said provision does it provide</u>**

[5] G.R. No. 258101, April 19, 2022.

> **<u>that a fresh 180-day period is granted to the respondent to act on such administrative appeal</u>**. 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.'" (Boldfacing and underlining supplied)

It is evident in paragraph 22 of the *Amended Petition for Review* that petitioner filed the instant case before this Court on the basis of the alleged failure of the CIR to act within 180 days from its request for reconsideration with regard to the FDDA issued by the Regional Director Rosario.

We would like to stress that the 180-day period to act on the protest, either by the CIR or his duly authorized representative, had already expired and petitioner failed to file an appeal with this Court within thirty (30) days from the lapse thereof. Consequently, petitioner has no other option but to wait for the respondent to act on its administrative appeal.

Inopportunely, the filing of the present petition, without waiting for the CIR to decide on its motion for reconsideration, is premature. The Court cannot acquire jurisdiction over the case in the absence of a final decision from the respondent with respect to petitioner's motion for reconsideration.

Jurisdiction is conferred by law and the lack of it affects the very authority of the Court to take cognizance of and to render judgment on the action; otherwise, the inevitable consequence would make the Court's discretion a "lawless" thing.[6]

It is a well-settled that 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 on the merits.[7]

WHEREFORE, premises considered, respondent's **Motion to Dismiss** is **GRANTED**. Accordingly, CTA Case No. 11045 is **DISMISSED** for lack of jurisdiction.

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[6] *Municipality of Sta. Fe vs. Municipality of Aritao*, G.R. No. 140474, September 21, 2007.

[7] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice