REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GETZ PHARMA (PHILS.), INC., Petitioner,	**CTA CASE NO. 9245**
- versus -	Members:
HON. COMMISSIONER KIM S. JACINTO-HENARES, HON. ALFREDO V. MISAJON, Regional Director, Revenue Region No. 7 and HON. JOSEPHINE S. VIRTUCIO, Regional District Officer, Revenue District No. 43-A East Pasig, Respondents.	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.* Promulgated: DEC 18 2020 2:00 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court are the following:

1. petitioner's **Motion for Reconsideration (of the Decision dated 09 June 2020)**, filed on July 6, 2020, without respondent's comment as per Records Verification report dated October 1, 2020; and,

2. petitioner's **Manifestation**, filed through registered mail on August 4, 2020 and received by the Court on August 25, 2020.

On June 9, 2020, this Court promulgated a Decision dismissing the present case due to petitioner's failure to timely file its Petition for Review, the dispositive portion of which is quoted as follows:

"**WHEREFORE**, premises considered, the *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.

SO ORDERED."

In its Motion, petitioner primarily claims that the Court erred when it dismissed the present Petition for Review for being filed beyond the thirty (30)-day period mandated by Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Regulations (RR) No. 12-1999, as amended by RR No. 18-2013.

Petitioner asserts that the Formal Letter of Demand and Final Assessment Notice (FLD-FAN) issued by the Bureau of Internal Revenue (BIR) are void *ab initio* and therefore cannot attain finality. It argues that the facts, as enumerated in the Decision, clearly show that the assessment was issued in violation of its right to due process of law since the FLD-FAN was issued on January 23, 2015, and was received by petitioner on January 26, 2015, which is less than the required fifteen (15) days allotted to it within which to file a protest in response to the Preliminary Assessment Notice (PAN).

Moreover, petitioner also points out that in a long line of cases, the Supreme Court has time and time again ruled that the issuance of a FAN without observing the fifteen (15) day period provided for by the rules within which the taxpayer may file its reply to the PAN is a clear violation of the taxpayer's right to due process. It alleges that the BIR, in issuing the FAN, could not have considered any of the arguments and explanations offered in its Reply to the PAN since the FAN had already been issued and received by the petitioner when the aforesaid Reply to the PAN was filed. Thus, petitioner insists that considering that the PAN forms part of the due process in issuing a tax assessment, the BIR's blatant disregard of its right to answer the same renders the corresponding assessment void – and since void assessments never attain finality, they can be attacked any time.

While, in its Manifestation, petitioner states that in previous Decisions of this Court involving similar factual matters, namely: *Getz Pharma (Phils.), Inc. v. Commissioner of Internal Revenue,* promulgated by the Special Third Division (CTA Case No. 8728, March 12, 2019), and *Getz Pharma (Phils.), Inc. v. Commissioner of Internal Revenue,* promulgated by the First Division (CTA Case No. 8922, January 17, 2020), the Court have consistently declared the BIR's assessments as void for being issued in violation of petitioner's right to due process of law. In those cases, the respective FANs were likewise held to be void for having been prematurely issued before the lapse of the fifteen (15)-day period within which to file a reply to the PAN. Petitioner then expresses that the above-mentioned rulings, in addition to the long established jurisprudence by the Supreme Court on the matter, undoubtedly support the finding that petitioner's right to due process of law was indeed violated.

Accordingly, petitioner's Manifestation is hereby **NOTED**. Also, upon a second hard look, this Court still finds no merit in the instant Motion for Reconsideration.

Verily, Section 228 of the NIRC of 1997, as amended, provides for the procedure in issuing tax assessments 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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> x x x
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice.** If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**

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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphases supplied)*

Notably, the above-quoted provision categorically states that "***within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice.***" For this reason, Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, was issued to implement Section 228 of the NIRC of 1997, as amended, laying down the period within which the assessment may be protested depending the kind of protest the taxpayer seeks, to wit:

"*SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

x x x

3.1.4 *Disputed Assessment.* – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) ***Request for reconsideration*** **— refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.**

(ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both. *Je* x x x

> **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. **<u>The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration</u>**. Furthermore, the term *'the assessment shall become final'* shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

x x x

> **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**.

x x x. *(Emphases and underscoring supplied)*

Based on the above provisions, an assessment may be protested by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment by the taxpayer. Notably, the main difference between the two type of requests lies on the basis for the BIR's re-evaluation of the taxpayer's audit records –in a request for reconsideration, the review is based "existing records without need of additional evidence"; while, in a request for reinvestigation, the basis is "newly discovered or additional evidence". Consequently, for a request for reconsideration, the counting of the 180-day period for respondent to act on the protest is from the date of the filing of the protest; while, on the other hand, in a request for reinvestigation, the said 180-day period begins from the date of submission of the required documents within the sixty (60)-day period.

To recall, the Court found that, as clearly stated in its protest and as consistently maintained by petitioner in all its correspondences sent to BIR, the protest filed by petitioner in the present case, is in the nature of a **request for reconsideration** and not a request for reinvestigation. Accordingly, the periods to be observed in filing the Petition for Review *vis-à-vis* requests for reconsideration must be observed.

Again, records of the present case show that petitioner filed its protest against the FLD-FAN on February 25, 2015. Applying the foregoing discussion, respondent had one hundred eighty (180) days from February 25, 2015 or until August 24, 2015, within which to act on the said protest. However, as claimed by petitioner, there was no action on the part of respondent, thus, petitioner had thirty (30) days from lapse of the 180 days or until September 23, 2015 within which to elevate the matter to this Court *via* the a Petition for Review. Considering that the present Petition for Review was only filed on January 20, 2016, this Court is clearly without jurisdiction to entertain the same.

Moreover, even assuming that the protest be considered as a request for reinvestigation, there is no indication that petitioner submitted "all relevant supporting documents" within the prescribed sixty (60)-day period from February 25, 2016 which is until April 26, 2015. Notably, petitioner's submission of documents in support of its protest started only on June 5, 2015, which was way beyond the required sixty (60)-day period. Consequently, the subject tax assessments became final for failure to comply with the statutory period as provided under Section 228 of NIRC of 1997, as amended in relation to Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013 and Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282.

Perforce, it is a cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[1]

Also, while it may be true that respondent prematurely issued the FLD-FAN prior to the lapse of the period to respond to the PAN, this Court must first acquire jurisdiction to try the same. Unfortunately, petitioner's failure to comply with the thirty (30)-day period to appeal herein deprives the Court of its jurisdiction to entertain and determine the merits of the case.

It must be stressed that since a petition for review is a form of appeal, non-compliance with the foregoing rule may render the same dismissible. This is in furtherance of the well-settled rule that "the right to appeal is not a natural right or 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 law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost." Verily, compliance with procedural rules is a must, "since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."[2]

In view of the foregoing disquisition, the Court finds no justifiable reason reverse or modify the conclusion reached in the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (of the Decision dated 09 June 2020) is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[1] *Cynthia S. Bolos v. Danio T. Bolos,* G.R. No. 186400, October 20, 2010.
[2] *Marlon Curammeng v. People of the Philippines*, G.R. No. 219510, November 14, 2016.

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice