REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

GETZ PHARMA (PHILS.), INC.,
Petitioner,

CTA CASE NO. 9245

Members:

-versus-

Castañeda, Jr., *Chairperson,*
Mindaro-Grulla, and
Bacorro-Villena, *JJ.*

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.

Promulgated:
JUN 09 2020

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DECISION

10:50 a.m.

CASTAÑEDA, JR., *J.*:

THE CASE

This is a *Petition for Review* filed on January 20, 2016 by petitioner Getz Pharma (Phils.), Inc. against respondents 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, praying that the *Preliminary Assessment Notice* (PAN) dated

January 8, 2015, *Formal Letter of Demand* and *Final Assessment Notice* (FLD-FAN) with attached Assessment Notice, all dated January 23, 2015, for calendar year (CY) ending December 31, 2011, be set aside and declared void; and that collection of deficiency tax liabilities be held in abeyance pending resolution of this *Petition*.[1]

THE PARTIES

Petitioner Getz Pharma (Phils.) Inc. is a corporation duly organized and existing under and by virtue of Philippine laws, with office at 2/F, Tower I, The Rockwell Business Center, Ortigas Avenue, Pasig City.[2]

Respondent Kim S. Jacinto-Henares is the Commissioner of Internal Revenue vested with by law in general to implement and enforce the provisions of the National Internal Revenue Code (NIRC) or other tax laws.[3]

Respondent Hon. Alfredo V. Misajon is the Regional Director of the Bureau of Internal Revenue (BIR), Revenue Region No. 7;[4] while respondent Hon. Josephine S. Virtucio is the Revenue District Officer (RDO) of the BIR Revenue District No. 43-A - East Pasig.[5]

THE FACTS

On January 14, 2015,[6] petitioner received a copy of the PAN dated January 8, 2015,[7] informing it for deficiency tax liabilities in the aggregate amount of ₱58,888,172.57, inclusive of interest for CY ending December 31, 2011, issued by Revenue Region No. 7, Quezon City. On January 29, 2015, petitioner filed the letter dated January 27, 2015, embodying its *Reply/Answer* to the PAN.[8] ge

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[1] Pre-Trial Order dated April 7, 2017, Docket – Vol. VI, p. 3853.
[2] Par. 6, *Joint Stipulation of Facts* (JSF), Docket – Vol. VI, p. 3801.
[3] Par. 7, JSF, Docket – Vol. VI, p. 3801; Par. 13, *Petition for Review*, Docket – Vol. I, p. 10, vis-à-vis Par. 4, Answer, Docket – Vol. II, p. 1034.
[4] Par. 11, *Petition for Review*, Docket – Vol. I, p. 10, vis-à-vis Par. 4, Answer, Docket – Vol. II, p. 1034.
[5] Par. 12, *Petition for Review*, Docket – Vol. I, p. 10, vis-à-vis Par. 4, Answer, Docket – Vol. II, p. 1034.
[6] Exhibit "P-6", Docket – Vol. VII, pp. 4680 to 4698.
[7] Par. 8, JSF, Docket – Vol. VI, p. 3801; Exhibit "P-3", Docket – Vol. VI, pp. 3972 to 3973.
[8] Exhibit "P-6", Docket – Vol. VII, pp. 4680 to 4698.

Thereafter, on January 26, 2015,[9] petitioner received the FLD-FAN dated January 23, 2015,[10] assessing it for tax liabilities in the aggregate amount of ₱60,238,702.01 for CY 2011. On February 25, 2015, petitioner filed its *Protest* of even date against FLD-FAN.[11]

On March 18, 2015, petitioner received the Letter Notice dated March 11, 2015 issued by Revenue Region No. 7, Quezon City,[12] informing petitioner that the *"Protest letter/request for reinvestigation dated 25 February 2015 xxx has been 'Granted' pursuant to Section 228 of the NIRC."* The said Letter Notice also informed petitioner that the case will be forwarded to Revenue District No. 43A.[13]

Subsequently, on May 28, 2015, the Letter Notice dated May 11, 2015,[14] from Revenue District No. 43A was received by petitioner, the pertinent portion of which states:

> *"xxx Although your request is for reconsideration, however upon partial evaluation, the issue on the Letter Notice discrepancy requires additional document. In this regard, we shall provide you another ten (10) days period upon receipt hereof to submit the documents or you may come to our office to discuss issues on letter notice."*[15]

Petitioner then submitted, on June 5, 2015, the documents requested by Revenue District No. 43A in compliance with its Letter Notice dated May 11, 2015.[16] Thereafter, on June 24, 2015, petitioner transmitted the copies of the Sales Book for CY 2011 to the BIR Revenue District No. 43A.[17]

On October 5, 2015, respondent RDO Virtucio issued a letter,[18] requesting it to provide the complete series of used official receipts

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[9] Exhibit "P-7", Docket – Vol. VII, pp. 4712 to 4733.
[10] Par. 9, JSF, Docket – Vol. VI, p. 3801; Exhibits "P-4" and "P-5", Docket – Vol. VI, pp. 3974 to 3976
[11] Exhibit "P-7", Docket – Vol. VII, pp. 4712 to 4733.
[12] Par. 10, JSF, Docket – Vol. VI, p. 3801; Exhibit "P-9", Docket – Vol. VI, p. 4054.
[13] Par. 17, *Petition for Review*, Docket – Vol. I, p. 18, vis-à-vis Par. 6, *Answer*, Docket – Vol. II, p. 1085.
[14] Par. 11, JSF, Docket – Vol. VI, p. 3801; Exhibit "P-10", Docket – Vol. VI, pp. 4055.
[15] Par. 18, *Petition for Review*, Docket – Vol. I, p. 18, vis-à-vis Par. 6, *Answer*, Docket – Vol. II, p. 1085.
[16] Exhibits "P-20" and "21", Docket – Vol. VII, pp. 5113 to 5118.
[17] Exhibit "P-23", Docket – Vol. VII, pp. 5121 to 5122.
[18] Par. 12, JSF, Docket – Vol. VI, p. 3801; Exhibit "P-18", Docket – Vol. VI, p. 4415.

for CY 2011, within fifteen (15) days from receipt thereof. In reply thereto, on October 22, 2015, petitioner, through the letter dated October 20, 2015,[19] re-submitted the photocopies of the original documents of the complete series of used official receipts for CY 2011.

On November 13, 2015, petitioner sent the letter dated November 12, 2015,[20] resubmitting its official receipts – Booklet #4 (Series # 000251-000300) issued for CY 2011 and the Audited Financial Statement (AFS) for CY 2011, upon the request of a certain Mr. Renato M. Atos.

Petitioner filed the present *Petition for Review* on January 20, 2016.[21] The case was initially raffled to this Court's First Division.

On April 14, 2016, respondents filed their *Answer*,[22] interposing the following special and affirmative Defenses:

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
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> 18. All presumptions are in favor of the correctness of the Assessment.
>
> 19. The herein Assessment has already become final, executory and demandable by reason of the failure of the petitioner to timely file the Petition for Review in accordance with the provisions of Section 228 of the NIRC, as amended."

The Pre-Trial Conference was initially set on June 30, 2016,[23] but was rescheduled to September 1, 2016. However, at the hearing held on September 1, 2016,[24] the Pre-Trial Conference was further moved to November 10, 2016.[25]

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[19] Exhibit "P-24", Docket – Vol. VII, pp. 5123 to 5127.
[20] Exhibit "P-26", Docket – Vol. VII, pp. 5138 to 5142.
[21] Docket – Vol. I, pp. 10 to 47.
[22] Docket – Vol. II, pp. 1084 to 1088.
[23] Notice of Pre-Trial Conference dated April 19, 2016, Docket – Vol. II, pp. 1089 to 1091.
[24] Minutes of the hearing held on, and Order dated, September 1, 2016, Docket – Vol. VI, pp. 3669 to 3673.
[25] Minutes of the hearing held on, and Order dated, November 10, 2016, Docket – Vol. VI, pp. 3743 to 3745, and 3748 to 3749, respectively.

Petitioner filed its *Pre-Trial Brief* on June 27, 2016;[26] while *Pre-Trial Brief for the Respondent* was filed on September 8, 2016.[27] On December 22, 2016, the parties filed their *Joint Stipulation of Facts*,[28] which was approved by the Court in the Resolution dated February 17, 2017,[29] thereby terminating the Pre-Trial. The Pre-Trial Order was issued on April 7, 2017.[30]

The trial of the case then ensued.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner's witnesses were the following: (1) Mr. Isagani B. Bobis,[31] petitioner's Senior Finance Manager; and (2) Atty. Mary Niña S. Paragas,[32] an Associate Lawyer of petitioner's counsel.

On July 21, 2017, petitioner filed its *Formal Offer of Evidence*.[33] Respondents failed to file their comment thereto.[34] In the Resolution dated November 17, 2017,[35] the Court admitted petitioner's Exhibits, except for the following: (1) Exhibits "P-2", "P-6", "P-7", "P-8", "P-11", "P-11-1" to "P-11-21", "P-11-23", "P-11-25" to "P-11-29", "P-11-31" to "P-11-33", "P-11-37" to "P-11-38", "P-11-44" to "P-11-45", "P-11-47" to "P-11-49", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-19", "P-20", "P-21", "P-22" to "P-22-1", "P-23", "P-24", "P-25", "P-26", for failure to submit the duly marked exhibits; and (2) Exhibits "P-8-1 series", "P-11-22", "P-11-24", "P-11-30", "P-11-34" to "P-11-36", "P-11-39" to "P-11-43", "P-11-46", "P-12-1 series", "P-13-1 series", "P-14-1 series", "P-15-1 series" and "P-16-1 series", for failure to submit the originals for comparison.

Petitioner then filed its *Motion for Partial Reconsideration (of the Resolution dated 17 November 2017)* on December 8, 2017.[36]

[26] Docket – Vol. II, pp. 1148 to 1163.
[27] Docket – Vol. VI, pp. 3678 to 3681.
[28] Docket – Vol. VI, pp. 3800 to 3805.
[29] Docket – Vol. VI, pp. 3838 to 3842.
[30] Docket – Vol. VI, pp. 3853 to 3864.
[31] Exhibit "P-27", Docket – Vol. III, pp. 1895 to 1916; Minutes of the hearing held on, and Order dated, May 2, 2017, Docket – Vol. VI, pp. 3869 to 3873.
[32] Exhibit "P-28", Docket – Vol. II, pp. 1164 to 1180; Minutes of the hearing held on, and Order dated, June 6, 2017, Docket – Vol. VI, pp. 3893 to 3896.
[33] Docket – Vol. VI, pp. 3925 to 3934.
[34] Records Verification dated October 3, 2017 issued by the Judicial Records Division of this Court, Docket – Vol. VII, p. 4590.
[35] Docket – Vol. VII, pp. 4593 to 4597.
[36] Docket – Vol. VII, pp. 4601 to 4611.

Respondents failed to file their comment thereto.[37] In the Resolution dated September 11, 2018,[38] the Court granted petitioner's motion and accordingly admitted Exhibits "P-2", "P-6", "P-7", "P-8 series", "P-11 series" ("P-11" to "P-11-49") "P-12 series", "P-13 series", "P-14 series", "P-15 series", "P-16 series", "P-17", "P-19", "P-20", "P-21", "P-22" to "P-22-1", "P-23", "P-24", "P-25", and "P-26".

Thereafter, the instant case was transferred to this Court's Second Division, pursuant to the Order dated September 26, 2018.[39]

In an Order dated November 12, 2018,[40] the Court set the respondents' presentation of evidence on December 5, 2018. Respondents, however, filed an *Urgent Motion to Reset and Cancel Hearing* on November 29, 2018.[41] At the hearing held on December 5, 2018,[42] the Court denied respondent's *Urgent Motion*, and accordingly ruled that respondents' right to present evidence is deemed waived.

Respondents filed their *Motion for Reconsideration (Order dated December 5, 2018)* on January 18, 2019.[43] Petitioner filed its *Opposition (To the Motion for Reconsideration of the Respondents dated 18 January 2019)* on February 4, 2019.[44] The Court, however, denied respondents' *Motion*, in the Resolution dated February 15, 2019.[45]

Petitioner filed its *Memorandum* on January 21, 2019;[46] while respondents failed to file their *Memorandum*.[47]

The instant case was submitted for decision on April 22, 2019.[48]

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[37] Records Verification dated January 17, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. VII, p. 5236.
[38] Docket – Vol. VII, pp. 5259 to 5261.
[39] Docket – Vol. VIII, p. 4586.
[40] Docket – Vol. VIII, p. 4587.
[41] Docket – Vol. VIII, pp. 4589 to 4591.
[42] Minutes of the hearing held on, and Order dated, December 5, 2018, Docket – Vol. VIII, pp. 4592 to 4594.
[43] Docket – Vol. VIII, pp. 4602 to 4605.
[44] Docket – Vol. VIII, pp. 4638 to 4646.
[45] Docket – Vol. VIII, pp. 4648 to 4650.
[46] Docket – Vol. VIII, pp. 4606 to 4635.
[47] Records Verification dated April 10, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. VIII, p. 4651.
[48] Resolution dated April 22, 2019, Docket – Vol. VIII, p. 4652.

THE ISSUE

The issue, as determined at the Pre-Trial stage of this case, is as follows:

> "*Whether the petitioner is liable for deficiency Income Tax and Value Added Tax for taxable year 2011, in the total amount of Php60,238,702.01 inclusive of surcharges and interest.*"[49]

Petitioner's arguments:

Petitioner argues that the FAN and 2011 FLD, having been issued in violation of its right to due process, is void *ab initio*; that the PAN, FAN and 2011 FLD issued by the BIR are null and void, for failure to indicate the facts and the law from which the assessment was based; that the right of the BIR to assess VAT for the 1st, 2nd, and 3rd quarters of 2011 had already prescribed; that assuming, without admitting, that the FAN is valid and the 1st to 3rd quarter VAT assessments have not prescribed, such assessments have no legal and factual basis; and that respondents have failed to prove the validity and truthfulness of the PAN, FAN and 2011 FLD.

Respondent's counter-arguments:

Respondent counter-argues that all presumptions are in favor of the correctness of the assessment; and that the assessment has already become final, executory and demandable by reason of the failure of petitioner to time file the *Petition for Review* in accordance with the provisions of Section 228 of the NIRC, as amended.

THE COURT'S RULING

In their *Answer*, respondents specifically claim that the assessment has attained finality due to petitioner's non-compliance with Section 228 of the NIRC, as amended, for its failure to timely file its *Petition for Review* before the Court. This claim calls for the resolution of whether this Court is endowed jurisdiction to take cognizance of the instant case. Thus, the Court shall first resolve the

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[49] Pre-Trial Order dated April 7, 2017, Docket – Vol. VI, p. 3854.

said issue as this is determinative of the authority of the Court to resolve the issues raised in the case.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; **it is conferred by law** and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.**[50]

This Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[51] To obviate the possibility that its decision may be rendered void, it can, by its own initiative, raise the question of jurisdiction, although not raised by the parties.[52]

Sections 7(a) and 11 of Republic Act (RA) No. 1125[53], as amended by RA No. 9282[54], provides as follows:

> "SEC. 7. ***Jurisdiction.* – The CTA shall exercise**:
>
> **(a) Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> **(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters

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[50] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[51] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010.
[52] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[53] AN ACT CREATING THE COURT OF TAX APPEALS.
[54] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**;" *(Emphases and underscoring ours)*

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA **within thirty (30) days after the receipt of such decision or ruling <u>or after the expiration of the period fixed by law for actions as referred to in Section 7(a)(2) herein</u>.**

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from receipt of the decision or ruling <u>or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon</u>.** xxx." *(Emphases and underscoring ours)*

Based on the foregoing provisions, this Court has exclusive appellate jurisdiction, *inter alia*, to take cognizance of decisions or inactions of the Commissioner of Internal Revenue (CIR) involving disputed assessments. The concerned taxpayer or party adversely affected by a decision or inaction of the CIR may file an appeal with this Court within thirty (30) days after the receipt of such decision, or after the expiration of the period fixed by law for actions, since the inaction within the said period shall already be deemed as a denial.

In any event, it must already be stated that the said 30-day period is jurisdictional and failure to comply therewith would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[55]

Section 228 of the NIRC of 1997 governs the filing of administrative protests for tax assessments and the appeal of decisions or inactions thereon, to wit:

> "SEC. 228. *Protesting of Assessment.* – xxx
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> xxx xxx xxx
>
> 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 and underscoring ours)* Jr

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[55] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

On the basis thereof, the period for action on the part of the CIR is one hundred eighty (180) days from the submission of documents; and the 30-day period to appeal to this Court, in case of inaction, is reckoned after the lapse of the said 180-day period, which, in turn, begins from the submission of all relevant supporting documents to be made within a period of sixty (60) days from the filing of the protest.

Implementing the provisions of the above-quoted Section 228, Section 3.1.4 of Revenue Regulations (RR) No. 12-99,[56] as amended by RR No. 18-2013,[57] reads as follows:

> "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) *<u>Request for reconsideration</u>* – refers to a plea of re-evaluation of an assessment <u>on the basis of existing records without need of additional evidence</u>. It may involve both a question of fact or of law or both.**
>
> **(ii) *<u>Request for reinvestigation</u>* – refers to a plea of re-evaluation of an assessment <u>on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation</u>. It may also involve a question of fact or law or both.**
>
> **The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation,** specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and

[56] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

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

(iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

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For <u>requests for reinvestigation</u>, the taxpayer shall submit all relevant supporting documents 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 t hose 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 shall <u>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.

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If the protest is not acted by the Commissioner's duly authorized representative <u>within one hundred eighty (180) days counted from the date of filing of the protest in case of a request [for] 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</u>, 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.

xxx xxx xxx

> **If the protest** or administrative appeal **is not acted upon by the Commissioner within one hundred eighty (180) days counted <u>from the 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.**
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> **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, <u>are mutually exclusive and the resort to one bars the application of the other</u>.**" *(Emphases and underscoring ours)*

By virtue of the foregoing provisions, the protest of the concerned taxpayer must either be a *request for reconsideration* or a *request for reinvestigation.* These requests are pleas of re-evaluation of an assessment, and may involve questions of fact and/or law, but may be distinguished as follows: (1) the basis for re-evaluation, in the case of a *request for reconsideration* is *"existing records without need of additional evidence"*, while the basis in the case of a *request for reinvestigation* is *"newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation"*; and (2) the 60-day period under the aforequoted Section 228, within which to submit all relevant documents of one's protest, refers only in the case of a *request for reinvestigation,* and **not** in the case of a *request of reconsideration.* Consequently, to be clear, for *requests for reconsideration,* the 180-day period commences from the date of the filing of the protest; while for *requests for reinvestigation,* such 180-day period begins from the date of filing of all relevant documents made within the prescribed 60-day period. ez

Correspondingly, the determination of whether a particular protest is a *request for reconsideration* or *request for reinvestigation* is crucial in ultimately deciding whether this Court has jurisdiction to take cognizance of a petition for review appealing an inaction of the CIR or his duly authorized representative, since the commencement of certain periods varies between the said *requests.*

In the instant *Petition for Review,* petitioner claims inaction on the part of respondents. In other words, in this case, petitioner alleges that respondents failed to decide or act upon its *Protest.*[58]

Without doubt, petitioner timely filed its *Protest* against the subject FLD-FAN on February 25, 2015.[59] Said *Protest* clearly stated the nature thereof, *i.e.,* it is a *"request for reconsideration".*[60] Additionally, in all the correspondences sent by it to the BIR, petitioner consistently maintained that the same *Protest* is a *"request for reconsideration".*[61] As such, the periods to be observed in filing the instant *Petition for Review* vis-à-vis *requests for reconsideration* must be applied thereto.

Thus, counting from February 25, 2015, the prescribed 180-day period for the BIR to act on the protest ended on August 24, 2015. Correspondingly, the instant *Petition for Review* should have been filed within thirty (30) from such latter date, or not later than September 23, 2014. Considering that instant *Petition for Review* was filed only on January 20, 2016, the Court is clearly without jurisdiction to entertain the same.

And even granting that petitioner's *Protest* filed on February 25, 2015 should, for any reason, be considered as a *request for reinvestigation,* the same is of no moment. This is so because there is no indication that petitioner submitted *"all relevant supporting documents"* within the prescribed sixty (60)–day period, which commenced from the said date, and ended on April 26, 2015. Consequently, pursuant to the above-quoted Section 228, the subject tax assessments became final, and there is neither 180-day nor 30-day period to speak of. *ge*

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[58] Par. 9, *Petition for Review,* Docket – Vol. I, p. 15; Par. 20, Petitioner's *Memorandum,* Docket – Vol. VIII, p. 4611.
[59] Exhibit "P-7", Docket – Vol. VII, pp. 4712 to 4733.
[60] *Id.,* at p. 4713.
[61] Refer to Exhibits "P-20", "21", "P-23", "P-24", and "P-26", Docket – Vol. VII, pp. 5113, 5116, 5121, 5123, and 5138, respectively.

In fine, petitioner has clearly failed to comply with the statutory periods in disputing an assessment as provided by Section 228 of NIRC of 1997, in relation to Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, and Sections 7(a) and 11 of RA No. 1125, as amended by RA No. 9282.

Apropos, petitioner's failure to file a petition for review with this Court within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.[62] Petitioner is now barred from disputing the correctness of the assessment or from invoking any defense that would reopen the question of its liability on the merits.[63]

To be sure, petitioner brought its appeal to the Court beyond the 30-day mandatory and jurisdictional period.

It is worth emphasizing that an appeal is neither a natural nor a constitutional right, but is merely statutory. The implication of its statutory character is that the party who intends to appeal must always comply with the procedures and rules governing appeals; or else, the right of appeal may be lost or squandered. Neither is the right to appeal a component of due process. It is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law.[64]

By way of reiteration, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[65]

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

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[62] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

[63] *Republic of the Philippines vs. Court of Appeals, et al.*, G.R. No. L-38540, April 30, 1987.

[64] *Duty Free Philippines vs. Bureau of Internal Revenue, represented by Hon. Anselmo G. Adriano, Acting Regional Director, Revenue Region No. 8, Makati City*, G.R. No. 197228, October 8, 2014.

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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