REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NUEVA ECIJA I ELECTRIC COOPERATIVE, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA Case No. 9563

Members:

CASTAÑEDA, JR., *Chairperson,*
MANAHAN, *JJ.*

Promulgated:
JUL 2 3 2019
4:30 p.m.

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D E C I S I O N

MANAHAN, *J.:*

This involves a Petition for Review filed on April 3, 2017 by petitioner, Nueva Ecija I Electric Cooperative, Inc, against respondent, Commissioner of Internal Revenue (CIR) before the Court in Division.

Petitioner seeks the cancellation and withdrawal of the deficiency income tax (IT) assessment issued by respondent for taxable year 2011. The Petition for Review also requested for the issuance of a Temporary Restraining Order (TRO) enjoining the respondent from collecting the alleged deficiency income taxes for the same taxable year.

THE PARTIES

Petitioner is a domestic corporation organized and existing under the laws of the Philippines and is an electric cooperative which holds office at Barangay Malapit, San Isidro, Nueva Ecija.

It is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. 000-540-511[1]

Respondent is the duly appointed CIR, head of the Bureau of Internal Revenue (BIR) who is vested with the powers and duties, among others, to assess and collect all national internal revenue taxes and to decide, approve and grant tax protests. He holds office at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

In response to the Petition for Review filed on April 3, 2017, respondent filed his Answer on June 30, 2017,[2] denying all the substantial allegations found in the Petition for Review either for lack of knowledge or for being false with the firm assertion that the truthful allegations are those found in his Affirmative Defenses.

The facts as narrated hereon shall be based on the evidence offered by the parties and admitted by the Court.

On May 11, 2016, petitioner received a Formal Letter of Demand[3] (FLD) dated April 20, 2016 with attached assessment notices for deficiency income tax (IT), value-added tax (VAT) and expanded withholding tax (EWT) for taxable year 2011 and a concomitant demand to pay the said amounts on or before May 30, 2016.

On May 24, 2016, petitioner filed a protest[4] against the subject assessments refuting the findings embodied in the FLD and assessment notices.

On July 20, 2016, the BIR, through OIC-Regional Director Jethro M. Sabariaga, partially denied the protest in its Final Decision on Disputed Assessment (FDDA).[5] The payment by petitioner of the EWT deficiency was duly noted, the VAT

[1] Exhibit "P-1", Vol. I, pp. 126-127; Exhibit "R-14", BIR Records, pp. 352-353.
[2] Docket, vol. I, pp. 182-197.
[3] Exhibit "P-1", , Vol. I, pp. 126-127.
[4] Exhibit "P-2", BIR Records, pp. 323-324.
[5] Exhibit "P-3", Docket, Vol. I., page 136.

assessment was cancelled but the deficiency income tax assessment was retained with modifications on the total amount, due to the updating of the interest penalty imposed. This FDDA was received by petitioner on August 4, 2016.[6]

In a letter dated September 2, 2016, petitioner filed a Request for Reconsideration[7] of the FDDA which was received by respondent on September 20, 2016.[8]

The instant Petition for Review was filed on April 3, 2017.

On April 18, 2017, the Court issued Summons to respondent requiring him to file an Answer within fifteen (15) days from notice.

On May 3, 2017, respondent filed a *Motion for Extension of Time to File Answer.* Meanwhile, a hearing was scheduled on petitioner's *Motion to Suspend Collection of Taxes* (embodied in its Petition for Review) on May 15, 2017 where it presented its Finance Manager, Mr. Von Richard Labios.

On June 1, 2017, the Court issued a Resolution[9] denying the *Motion to Suspend Collection of Taxes* filed by petitioner on the ground that the conditions required for the issuance of a writ of preliminary injunction do not exist, i.e., no collection efforts have been commenced by the BIR to justify the suspension of collection of taxes.

On June 30, 2017, respondent filed his Answer[10] to the Petition for Review.

A Notice of Pre-Trial Conference[11] was issued by the Court, setting the case for pre-trial conference on July 20, 2017 at 1:30 p.m. Accordingly, respondent's Pre-Trial Brief[12] was filed on July 18, 2017; while petitioner filed a *Motion to Admit Judicial Affidavit of Witness*[13] on July 17, 2017 attaching therewith its

[6] Exhibit "P-3", Vo. I, pp. 136.
[7] Exhibit "P-4", Vol. I, pp.138-162.
[8] BIR Records, pp. 471-501.
[9] Docket, Vo. I, pp.172-176.
[10] Docket, Vol. I, pp. 182-197.
[11] Docket, vol. I, pp. 199-200.
[12] Docket, vol. I, pp. 206-208.
[13] Docket, Vol. I, pp. 211-232.

Manifestation/ Compliance, Judicial Affidavit of Mr. Von Richard Labios and its *Pre-Trial Brief.*

The pre-trial conference was conducted as scheduled.[14] Thereafter, the parties submitted their *Joint Stipulation of Facts and Issues*[15] (JSFI) on August 3, 2017. Accordingly, the Court issued a Pre-Trial Order[16] on August 14, 2017 and the pre-trial was deemed terminated.

In the JSFI filed by both parties, the only admitted fact is as follows:

> "Respondent Commissioner of Internal Revenue admits that it is duly appointed to perform duties of his office, including amongst others the power to act upon and render final decisions on protests filed against internal revenue tax assessments pursuant to the provisions of the National Internal Revenue Code (NIRC) and hold (sic) office at the Bureau of Internal Revenue ("BIR") National Office Building located at Agham Road, Diliman, Quezon City where he may be served with notices, summons, orders, resolutions and such other processes of this Honorable Court."

During trial, petitioner presented its lone witness, its Finance Manager, Von Richard. R. Labios.

The *Formal Offer of Evidence* for the Petitioner[17] was filed on September 5, 2017.

Respondent filed his *Comment/Opposition*[18] to petitioner's *Formal Offer of Evidence* on September 8, 2019.

On September 13, 2017, the Court issued an Order finding the copies of the Formal Offer of Evidence of Petitioner insufficient in number and directed the same to submit additional three (3) copies which petitioner did on October 11, 2017.

All exhibits offered by petitioner were admitted by this Court, except for Exhibits "P-4" and "P-6" for failure to present the originals for comparison pursuant to the Resolution[19] dated October 26, 2017.

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[14] Minutes of the Hearing dated July 20, 2017, Docket, vol. I, p. 270.
[15] Docket, vol. I, pp. 275-279.
[16] Docket, vol. I, pp. 281-284.
[17] Docket, vol. I, pp. 289-292.
[18] Docket, Vol. I, pp.294-295.
[19] Docket, vol. I, pp. 327-328.

Exhibits "P-4" and "P-6" were subsequently admitted by the Court during the hearing held on October 30, 2017.

Respondent filed a *Motion for Reconsideration* [20] on November 10, 2017 relative to the Court's Resolution dated October 26, 2017 challenging the admission of the exhibits of petitioner and the open court admission of Exhibits "P-4" and "P-6" during the hearing held on October 30, 2017. Respondent submits that the exhibits should not have been admitted by the Court on the ground that petitioner filed its Formal Offer of Evidence beyond the period prescribed by the Court.

Respondent also filed an *Omnibus Motion* on November 10, 2017 requesting the Court to have its Exhibit "R-7" marked as original because petitioner's counsel refused to stipulate that the Secretary's Certificate identified as Exhibit "R-7" is an original document.

Petitioner filed a Consolidated Comment to the *Omnibus Motion and Motion for Reconsideration both dated 10 October 2017*[21] on December 11, 2017 refuting the allegations of respondent in both his *Motion for Reconsideration* and *Omnibus Motion.*

On February 20, 2018, the Court issued a Resolution[22] ruling in favor of petitioner and denying the aforesaid motions filed by respondent. In this same Resolution, the Court gave respondent a period of five (5) days from notice to file his Formal Offer of Evidence.

Respondent presented Revenue Officer (RO) Ms. Kharleli Dhjoana T. Balico[23] as his lone witness.

Thereafter, respondent filed his *Formal Offer of Evidence*[24] on March 13, 2018. All exhibits were admitted by this Court except Exhibit "R-7" for failure to submit the original for comparison pursuant to the Resolution dated April 23, 2018.[25]

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[20] Docket, Volume I ,pp. 334-336.
[21] Docket, Volume I, pp.
[22] Docket, Volume I, pp. 358-361.
[23] Minutes of the Hearing dated October 30, 2017, Docket, Vol. I., page 329.
[24] Docket, vol. I, pp. 362-366.
[25] Docket, Volume II, pp. 371-372.

The case was deemed submitted for decision on August 7, 2018[26], after the petitioner and respondent submitted their Memorandum on July 6, 2018 and June 22, 2018, respectively.

THE ISSUES

The parties submitted the following issues[27] for the Court's resolution:

a. Whether or not the Court has jurisdiction over the instant Petition;

b. Whether or not petitioner is liable to pay the aggregate amount of Sixty-Seven Million Eight Hundred Seventy One Thousand Two Hundred Seventy-Four and 91/100 (Php67,871,274.91) as deficiency income taxes for taxable year 2011 plus surcharge and interests;

c. Whether or not electric cooperatives are revenue neutral and are permanently exempt from income tax;

d. Whether or not the respondent's right to collect from petitioner NEECO I the alleged deficiency taxes for taxable year 2011, in the amount of Sixty Seven Million Eight Hundred Seventy Four Pesos and Ninety One Centavos (Php67,871,274.91), has already prescribed;

e. Whether or not Revenue Memorandum Circular 74-2013 can be given any retroactive effect.

f. Petitioner has rate components that are pass-through charges and non-revenue items mandated by the Energy Regulatory Commission and are not part of the taxable income.

Petitioner's Arguments

Petitioner's first line of defense is the alleged invalidity of the subject assessments due to prescription. Respondent's right to assess its internal revenue taxes for taxable year 2011 prescribed despite petitioner's *Waiver of Prescription under the*

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[26] Docket, vol. II, pp. 458-459.
[27] Issues, JSFI, docket, vol. I, pp. 275-279.

Statute of Limitations of the National Internal Revenue Code (waiver) due to its inherent defects. Petitioner cites the provisions of Revenue Memorandum Order (RMO) No. 20-90 as bases for the invalid waiver, to wit:

a. The signatory of the petitioner does not appear to have been duly authorized to execute the waiver on its behalf;
b. The waiver does not indicate the date when the respondent accepted the terms of the waiver;
c. There is no proof showing when petitioner was furnished a copy of said accepted waiver.
d. The waiver was not *duly* notarized.

Petitioner asserts that the person who signed the waiver (purportedly on its behalf) was not authorized to represent it before the BIR for purposes of investigation in the absence of a Secretary's Certificate or a Board Resolution. In relation to this, petitioner stretched its argument further by stating that since it had no "authorized representative", all official notices including the Final Assessment Notices (FANs) were not properly served hence making said official notices invalid. The other enumerated defects, according to petitioner, i.e., no date of acceptance, not duly notarized etc., also served to invalidate the waiver making the extension of the period to assess null and without any effect thereby resulting to the issuance of assessments beyond the period prescribed by law. Therefore, petitioner submits that the FAN issued for taxable year 2011 is null and void because it received the same only on May 11, 2016 which is clearly beyond the three (3) year period prescribed by law.

On the substantive aspect of its alleged income tax deficiency, petitioner asserts that it is "revenue neutral" because as an electric cooperative created under Presidential Decree (P.D.) No. 269, it is not an income generating entity and is not capable of "making income" as this term is understood from an accounting and tax perspective. Petitioner cites Section 39 of P.D. 269 which allegedly grants income tax exemption in favor of electric cooperatives, quoted as follows:

> "Section 39. Assistance to Cooperative; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation: Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:
>
> (a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperative (1) shall be

> permanently exempt from paying income taxes, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree; Provided, That the Board of Administrators shall after consultation with the Bureau of Internal Revenue, promulgate rules and regulations of the tax exemptions provide for in this Decree."

Petitioner then enumerates the subsequent presidential decrees and issuances to illustrate its argument that in spite of legal developments related to taxation of electric cooperatives, the latter remains to be exempt from income tax particularly during the taxable year 2011, the period covered by the subject tax assessment. We quote portions of petitioner's Memorandum:

> "50. In 1984, Presidential Decree No. 1955 was enacted by President Marcos which appears to have withdrawn all exemptions from or any preferential treatment in payment of duties, taxes, imposts, and other charges granted to private business enterprises and/or persons engaged in any economic activity, xxx xxx xxx
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> 51. Then on January 8, 1986, then President Marcos issued Presidential Decree No. 2008, requiring the Minister of Finance to immediately restore the tax exemption of cooperatives. P.D. 2008 however specifically refers to P.D. 175, which was then the law governing electric cooperatives. Presidential Decree No. 269 governing electric cooperatives is a special law, which was not therefore covered by P.D. 1955 and P.D. 2008.
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> 52. In December 1986, President Corazon C. Aquino issued Executive Order No. 93 (E.O. 93), which, like P.D. 1955, appears to have withdrawn all tax and duty exemptions granted to private entities effective march 10, 1987. A perusal of the whereas clauses of E.O. 93 would show however the intent not to cover P.D. 269 which specifically govern electric cooperatives.
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> xxx xxx xxx

> 54. On March 10, 1990, Republic Act No. 6938 was enacted ordaining the Cooperative Code of the Philippines. Article 127 thereof provides- "Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provisions of this Code shall be deemed repealed: Provided that nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269; Provided, further, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof."
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> xxx xxx xxx

Petitioner also maintains that the provisions of Revenue Memorandum Circular (RMC) No. 74-2013 issued in November of 2013 (which served as the basis of the deficiency assessment) should have no retroactive application as this would be confiscatory and violative of Section 246 of the 1997 National Internal Revenue Code (NIRC) which prohibits the retroactive application of rules and regulations if such will be prejudicial to taxpayers.

Respondent's Counter-arguments

In his Answer filed on June 30, 2017, respondent interposed his foremost affirmative defense that the Court has no jurisdiction over the instant Petition for Review. Respondent's argument hinges on the timeliness of petitioner's appeal to the Court after a protest has been denied.

Respondent puts forth his theory that a taxpayer who originally filed a protest has only two options if said protest is denied, one is to elevate its protest to the respondent within thirty (30) days from denial **or** elevate an appeal within the same period to the Court of Tax Appeals (CTA). He further submits that in case of inaction by the CIR on protests elevated to him by reason of denial by his duly authorized representative, the CIR is only given the remaining days of the 180-day period from filing of the protest within which to decide citing Section 228 of the 1997 NIRC in relation to Sections 3.1.5 and 3.1.6 of Revenue Regulation (RR) No. 12-99[28] as amended by RR 18-2013. Thereafter, respondent believes that the protest should be elevated by the taxpayer to the CTA within thirty (30) days

[28] "Implements the provisions of the National Internal Revenue Code of 1997 governing the rules on assessment of national internal revenue taxes, fees and charges."

from receipt of the decision. Further, respondent asserts that if the CIR fails to act on the protest within the 180-day period, the same shall be considered a denial of the protest and the taxpayer may either (1) appeal to the CTA within 30 days from the lapse of the 180 -day period; or (2) wait for the decision of the CIR even beyond the 180 day period and thereafter appeal such decision to the CTA within thirty (30) days after receipt of such decision.

In the instant case, respondent claims that petitioner filed its protest on the assessment on May 24, 2016 and since relevant supporting documents were already attached to said protest, the counting of the 180-day period shall be counted from the date of filing of the protest. Therefore, counting 180 days from May 24, 2016, his representative (in this case, the Regional Director) had until November 20, 2016 to render the decision. Petitioner received a copy of the FDDA on August 4, 2016 and sought a reconsideration of the FDDA on September 2, 2016. Respondent submits that when petitioner sought reconsideration of the denial of its protest, the CIR had only the remainder of the 180-day period or 78 days, or only until November 20, 2016 to decide. Counting 30 days from the last day of the 180-day period, petitioner had until December 30, 2016 to file an appeal with the CTA. Petitioner then concludes that the Petition for Review which was filed before this Court only on April 3, 2017 is way beyond the prescriptive period hence depriving the Court of its jurisdiction over the instant case.

On the substantive aspect of the income tax deficiency, respondent quoted the entire BIR Ruling No. 398-2013 dated November 4, 2013 which was circularized in RMC 74-2013 issued on November 26, 2013, the relevant portions are quoted as follows:

> "Moreover, all Electric Cooperatives registered with the NEA, shall be subject to the following:
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> 1. 20% final income tax on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines;
> 2. 7.5% final income tax on interest income derived from a depositary bank under the expanded foreign currency deposit system
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> xxx xxx xxx

7. All other taxes for which ECs are not otherwise expressly exempted by law."

RMC 74-2013 served as the basis of the deficiency tax assessments issued by respondent against petitioner for taxable year 2011.

On the issue of the validity of the waivers extending his office's right to assess petitioner's deficiency taxes for taxable year 2011, respondent maintains that these waivers were validly executed and even for the sake of argument that the waivers are defective, petitioner is estopped from questioning the validity of the waivers based on the ruling of the Supreme Court in the case of *CIR vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[29] where the *pari delicto* rule was applied.

RULING OF THE COURT

Jurisdiction of the Court of Tax Appeals

The determination of whether a Court has jurisdiction to take cognizance of a petition is primordial because when a court has no jurisdiction over the subject matter, its only power is to dismiss the action.[30] It is important that a court or tribunal should first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.[31]

As a court of special or limited jurisdiction, the CTA can only take cognizance of matters that are within its jurisdiction as provided by Republic Act (R.A.) 1125 as amended by R.A. 9282, thus:

"Section 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

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[29] G.R. No. 212825, December 7, 2015.
[30] Bilag, et. al., vs. Ay-Ay, et. al., G.R. No. 189950
[31] Tan vs. Cinco, G.R. No. 213054, June 15, 2016.

> revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;"

xxx xxx xxx

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[32]

Respondent puts forth the argument that the Court has no jurisdiction over the instant Petition for Review because petitioner belatedly filed its appeal with this Court, in violation of relevant laws, rules and regulations.

As earlier discussed, respondent maintains that petitioner should have filed its appeal with the Court on or before December 30, 2016 and that the actual filing of the Petition for Review on April 3, 2017 was already beyond the period prescribed by law and its relevant regulations.

Petitioner was silent on this particular issue and failed to dispute the same even in its Memorandum. Instead it assailed the validity of the waivers executed to extend the period to assess maintaining that the waivers were defective resulting to the prescription of the respondent's right to assess its 2011 deficiency taxes.

We shall first analyze respondent's contention on lack of jurisdiction of the Court over the Petition for Review.

The records of this case and the evidence admitted by the Court, reveal that petitioner received a Formal Letter of Demand[33] (FLD) dated April 20, 2016 on May 11, 2016 with attached assessment notices for alleged deficiency IT, VAT and EWT for taxable year 2011.

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[32] *Team Pacific Corporation vs. Daza,* G.R. No. 167732, July 11, 2012.
[33] Exhibit "P-1", Vol. I, pp. 126-127.

A protest was filed by petitioner on May 24, 2016[34] refuting the findings embodied in the FLD and assessment notices.

An FDDA was issued by OIC-Regional Director Atty. Jethro M. Sabariaga dated July 20, 2016 [35] essentially and substantially upholding the deficiency income tax assessment for the taxable year 2011 and cancelling the VAT and EWT assessments. This FDDA was received by petitioner on August 4, 2016.[36]

Petitioner then filed a Request for Reconsideration dated September 2, 2016 [37] addressed to the Office of the Commissioner and which was received by respondent's office on September 20, 2016.[38]

Petitioner then filed its Petition for Review with this Court on April 3, 2017.[39]

The records of this case do not show nor the allegations of both parties reveal if there was any action on the part of respondent on the aforementioned Request for Reconsideration dated September 2, 2016. Respondent in his Answer suggests that there was inaction on his part on the Request for Reconsideration as his argument on the reckoning period to appeal is premised on the "inaction" of the CIR "on protests elevated to him by reason of denial of its authorized representative" (see paragraph 11.3 of Answer, page 193 of the Court Docket, Volume I). No evidence was submitted by petitioner with regard to any decision having been issued by the CIR on its Request for Reconsideration.

The law is clear on the period to appeal to this Court if a decision on the protest is denied in whole or in part by the CIR. Section 228 of the 1997 NIRC, as amended, provides:

> 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

[34] Exhibit "P-2", BIR Records, pp. 323-324.
[35] Exhibit "P-3", Docket, Vol. I., page 136.
[36] Exhibit "P-3", Vo. I, pp. 136.
[37] Exhibit "P-4", Vol. I, pp.138-162.
[38] BIR Records, pp. 471-501.
[39] Docket, Vol. pp.10-45.

preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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." (emphasis supplied)

The aforequoted Section 228 is implemented by Revenue Regulations (RR) No. 12-99 as amended by RR No. 18-2013 issued on November 28, 2013. Relevant portions of Section 3.1.4 of RR 18-2013 are quoted hereinbelow as follows:

Section 3.1.4 *Disputed Assessment* –

xxx xxx 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.

> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty days (180) days counted from the date of the filing of the protest in case of a request for reconsideration or from date of submission 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 day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
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> 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 of Internal Revenue within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either : (i) appeal to the CTA within thirty (30) days from 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 thirty (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 thirty (30) days after receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other."

What happened in the instant case is not cut and dried as will easily fit the afore-quoted provisions of Section 228 of the 1997 NIRC and implemented by RR 18-2013. After receiving the FDDA signed by OIC-Regional Director of San Fernando, Pampanga, petitioner subsequently filed a Request for Reconsideration of the FDDA with the Office of the CIR within thirty (30) days from receipt of said FDDA. There was no action on this request for reconsideration by respondent until the filing of the Petition for Review by petitioner on April 3, 2017. Considerably, 103 days have elapsed from the date of the Request until the Petition for Review.

Respondent theorizes that the instant Petition for Review filed by petitioner on April 3, 2017 is way beyond the prescriptive period to file an appeal with the CTA.

We find for the respondent.

It is plain from Section 228 and Section 3.1.4 of RR 12-99 as amended by RR 18-2013 that a taxpayer has two (2) options if an FDDA is issued by the Commissioner or his duly authorized representative on a protest filed: (1) file an appeal with the CTA within thirty (30) days from receipt of the FDDA, and (2) wait for the lapse of the 180 day period and thereafter file an appeal with the CTA within 30 days from said lapse. RR 18-2013 states that the two options are mutually exclusive and resort to one bars the application of the other.

In case the FDDA is issued, not by the CIR, but his duly authorized representative which in this case *a quo*, was OIC-Regional Director Jethro M. Sabariaga, the taxpayer is given another option, i.e., to file a request for reconsideration with the CIR within thirty (30) days from receipt of the FDDA and this is what is called under RR 18-2013 as an *administrative appeal.*

In case there is inaction on the part of the CIR on an administrative appeal by way of a motion for reconsideration within the 180-day period, RR 18-2013 provides for similar options, i.e., (1) await the decision of the CIR and then file an appeal with the CTA within thirty (30) days from receipt of the decision or (2) appeal to the CTA within thirty (30) days from the expiration of the 180-day period.

In the instant case, petitioner filed a Request for Reconsideration on the FDDA issued by the Regional Director to the CIR and availed itself of an administrative appeal instead of going straight to the Court via a judicial appeal.

It appears that the CIR did not act upon this Request for Reconsideration (filed on September 2, 2016) so petitioner elevated an appeal to the CTA on April 3, 2017. Obviously, petitioner chose option No. 2 because there was no decision from which to appeal. The records of this case do not show that the CIR acted on such Request for Reconsideration. Unfortunately however, petitioner's availment of the second option was way too late as it was exercised belatedly from the expiration of the 180 day period.

The original protest of taxpayer against the FLD and the FANs was filed on May 24, 2016 and without evidence that it submitted additional documents, the counting of the 180-day period was reckoned from May 24, 2016. Counting 180 days from May 24, 2016, the 180-day period lapsed on November 20, 2016. To avail of the second option, petitioner should have filed its appeal with the Court on December 20, 2016, however, it only filed its Petition for Review on April 3, 2017 which was way beyond the period prescribed by law.

If petitioner opted to avail of option No. 1, i.e., wait for the final decision of the CIR on its Request for Reconsideration, then the ruling of the Supreme Court in the case of *Lascona Land Co. vs. CIR*[40] would have been applied to its advantage. In the *Lascona* case, the Supreme Court ruled that a taxpayer may choose to wait for the final decision of the CIR on an FDDA even beyond the 180 day period and thereafter file an appeal with the CTA within thirty (30) days from receipt of said decision, and we quote:

> "Therefore, as in Section 228, when the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. **A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More so, because the law have always contemplated a scenario where the CIR will decide on the protested assessment." (emphasis supplied)**

It is clear that petitioner filed an appeal with the CTA on the basis of the inaction of the CIR on its Request for Reconsideration, hence the prescriptive period under such option applies.

Section 3.1.4 of RR 18-2013 also echoes the ruling of the Supreme Court in the *Lascona* case where it states that the two options are mutually exclusive and that resort to one bars the application of the other. By having chosen the option of filing an appeal in case of inaction on the part of the CIR, petitioner is barred from availing of the other option of waiting for the final decision of the CIR.

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[40] G.R. No. 171251, March 5, 2012.

Accordingly, petitioner's income tax deficiency had already become final, executory and demandable therefore this Court has no jurisdiction to rule on the substantive aspects of the subject deficiency assessment. Similarly, the Court cannot rule on the other issues raised by the petitioner in its Petition for Review.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice