REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

NUEVA ECIJA I ELECTRIC COOPERATIVE, INC. (NEECOI), Petitioner,	**CTA EB No. 2187** (CTA Case No. 9563)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 2 1 2021 2:48 p.m.

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review* filed on November 22, 2019[1] by petitioner Nueva Ecija I Electric Cooperative Inc. (NEECO I), against respondent Commissioner of Internal Revenue (CIR), praying to set aside the Decision dated July 23, 2019 and Resolution dated October 24, 2019[2], both rendered by the Special Second Division of this Court in CTA Case No. 9563, entitled *"Nueva Ecija I Electric Cooperative, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent".* The dispositive portions thereof respectively read:

[1] EB Docket, pp. 1 to 39.

[2] Decision dated July 23, 2019, and Resolution dated October 24, 2019, penned by Associate Justice Catherine T. Manahan, concurred by Associate Justice Juanito C. Castañeda, Jr., EB Docket, pp. 46 to 64; and pp. 79 to 84, respectively.

<u>Decision dated July 23, 2019</u>:

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

<u>Resolution dated October 24, 2019</u>:

> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration posted on August 14, 2019 is **DENIED** for having been filed out of time. Respondent's Motion for Entry of Judgment is hereby **GRANTED**.
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> Accordingly, let entry of judgment be made in due course.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is a domestic corporation organized and existing under the laws of the Philippines. It is an electric cooperative which holds office at Barangay Malapit, San Isidro, Nueva Ecija and is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. 000-540-511.

On the other hand, respondent is the duly appointed CIR, head of the 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. The CIR holds office at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On May 11, 2016, petitioner received a Formal Letter of Demand (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 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). The payment by petitioner of EWT deficiency was duly noted, the VAT 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 5, 2016.

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

Thereafter, petitioner filed with the Court in Division a *Petition for Review (With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)* on April 3, 2017 docketed as CTA Case No. 9563.

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, Von Richard Labios.

On June 1, 2017, the Court in Division issued a Resolution 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* alleging, among others, as an affirmative defense, the Court's lack of jurisdiction over the Petition for Review

After the pre-trial conference on July 20, 2017, the parties filed their *Joint Stipulation of Facts and Issues* on August 3, 2017. Upon approval thereof, the Court in Division issued a Pre-Trial Order on August 14, 2017 and pre-trial was deemed terminated.

During trial, petitioner presented its lone witness, Von Richard R. Labios, petitioner's Finance Manager. For his part, respondent presented as witness Revenue Officer (RO) Kharleli Dhjoana T. Balico.

On August 7, 2018, CTA Case No. 9563 was submitted for decision, after the petitioner and respondent submitted their Memorandum on July 6, 2018 and June 22, 2018, respectively.

On July 23, 2019, the Court in Division rendered a *Decision*[3] dismissing the Petition for Review for lack of jurisdiction.

On August 14, 2019, petitioner filed a *Motion for Reconsideration*,[4] with *Opposition with Motion for Entry of Judgment* filed by respondent on September 13, 2019.[5]

In the Resolution dated October 24, 2019, the Court in Division denied petitioner's Motion for Reconsideration for having been filed out of time, while respondent's Motion for Entry of Judgment was granted.[6]

On November 22, 2019, petitioner filed before the Court *En Banc* the instant Petition for Review docketed as CTA EB No. 2187.[7]

In the Resolution dated December 27, 2019, the Court *En Banc* directed respondent to file his comment to the Petition for Review.[8]

On January 17, 2020, respondent filed a *Motion for Extension of Time to File Comment,*[9] praying for additional period of ten (10) days from January 17, 2020 or until January 27, 2020, within which to file his comment. The same was granted by the Court *En Banc* on January 20, 2020.[10]

On January 27, 2020, respondent filed his *Opposition.*[11]

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[3] EB Docket, pp. 46 to 64; Division Docket (CTA Case No. 9563)– Vol. II, pp. 461 to 479.
[4] Division Docket – Vol. II (CTA Case No. 9563), pp. 480 to 490.
[5] Division Docket – Vol. II (CTA Case No. 9563), pp. 495 to 499.
[6] EB Docket, pp. 79 to 84; Division Docket – Vol. II (CTA Case No. 9563), pp.502 to 506.
[7] EB Docket, pp. 1 to 39.
[8] EB Docket, pp. 133 to 134.
[9] EB Docket, pp. 135 to 136.
[10] Minute resolution dated January 20, 2020, EB Docket, p. 139.
[11] EB Docket, pp. 140 to 145.

Thereafter, the Court *En Banc* referred the instant case to the Philippine Mediation Center Unit-Court of Tax Appeals (PMC-CTA) for mediation pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals* on February 6, 2020.[12] On July 28, 2020, the Court *En Banc* received from the PMC-CTA a *No Agreement to Mediate* between the parties.[13] Thus, on September 9, 2020, the instant Petition for Review was submitted for decision.[14] Hence, this Decision.

ISSUES

As culled from the arguments raised by petitioner in the instant Petition for Review, the following are the relevant issues submitted for this Court's resolution:

a. Whether or not this Court has jurisdiction over the instant Petition for Review questioning and/or assailing the validity of the alleged deficiency income tax, including fines and penalties against petitioner for taxable year 2011;

b. Whether or not petitioner's *Motion for Reconsideration* was timely filed before the Court in Division;

c. Whether or not respondent's right to collect from petitioner the alleged deficiency income taxes for taxable year 2011 has already prescribed; and

d. Whether or not Revenue Memorandum Circular No. 74-2013 can be given any retroactive effect.

Petitioner's arguments:

According to petitioner, the Court in Division erred in denying its Motion for Reconsideration for being filed out of time; that the period of filing the Motion for Reconsideration before the Court in Division should be reckoned from July 30, 2019, and not on the date appearing in the LBC Tracker. As per tracking information culled from the web site of courier service LBC, the said copy of the Decision was received by a certain "Jen". No last name was indicated by the recipient. The law office acting as petitioner's

[12] Resolution dated February 6, 2020, EB Docket, pp. 148 to 149.
[13] EB Docket, p. 150.
[14] Resolution dated September 9, 2020, EB Docket, pp. 152 to 153.

counsel nor the accounting office that shares its office space, has no employee named "Jen" or any variants of the said name. The copy of the Decision was allegedly forwarded to petitioner's counsel only on July 30, 2019. By mistake, this person may have accepted the delivery but only transmitted the said copy to petitioner's counsel on July 30, 2019.

Furthermore, petitioner contends that the Court in Division has jurisdiction over CTA Case No. 9563. Allegedly, the issue of prescription of respondent's right to collect the deficiency taxes against petitioner falls under "other matters" over which the CTA has appellate jurisdiction pursuant to Section 7(a)(1) of RA No. 1125, as amended.

Respondent's right to collect from petitioner the alleged deficiency taxes for taxable year 2011 has already prescribed considering that the requisites of a valid Waiver of the Defense of Prescription were not complied with. Hence, there is no valid agreement extending the prescriptive period.

In addition, petitioner argues that it is exempt from income tax by invoking the ruling in CTA Case No 9376,[15] where the Special First Division held that electric cooperatives are not liable for payment of income tax. Since petitioner is similar to the petitioner in CTA Case No. 9376, being the same entity registered under the National Electrification Administration (NEA) under Presidential Decree No. 269, it is likewise exempt from income tax.

Petitioner also asserts that the deficiency tax assessment for taxable year 2011 is in the nature of a void assessment. Hence, the right to challenge the assessment is imprescriptible.

As regards to its rate components namely, Reinvestment Fund for Sustainable, National Power Corporation Stranded Contract Cost, Missionary Electrification, and Environmental Charge, petitioner contends that these are pass-through charges and non-revenue items mandated by the Energy Regulatory Commission, and thus, are not part of taxable income.

Lastly, petitioner maintains that RMC No. 74-2013 cannot be given retroactive effect as it would be confiscatory and violative of Section 246 of the NIRC of 1997, as amended.

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[15] Agusan Del Norte Electric Cooperative., Inc vs. Commissioner of Internal Revenue.

Respondent's counter-arguments:

In his Opposition filed on January 27, 2019, respondent counter-argues that the instant Petition for Review should be dismissed because petitioner availed of a wrong mode of appeal.

According to respondent, the assailed Decision dated July 23, 2019 has become final and executory for failure of petitioner to file a timely appeal of the assailed Decision which has already attained finality and is therefore immutable and unappealable.

In trying to wiggle out of its failure to timely file an appeal, petitioner points its finger to a certain "Jen" who received the Decision but is allegedly not an employee of petitioner's counsel. Respondent submits that this flimsy excuse deserves scant consideration as it is a mere afterthought after petitioner's belated filing has been discovered by respondent. If indeed this was the circumstance, petitioner could have explained this early on in its Motion for Reconsideration.

Although the law abhors dismissal of cases due to technicalities, adherence to such principle should be based on valid and justifiable cause. As in the case, petitioner presented no valid and justifiable cause. Thus, there is no persuasive reason to reverse the findings of the Special Second Division of the Court of Tax Appeals.

Respondent likewise argues that granting without conceding that petitioner's motion for reconsideration was timely filed, petitioner's motion lacks merit. Respondent submits that the Court in Division correctly ruled that the petition for review in CTA Case No. 9563 was filed out of time. In claiming that the 180-day period is counted from the filing of request for reconsideration, petitioner believes that the CIR has a fresh 180-day period to act on petitioner's request for reconsideration. Petitioner is however clearly mistaken.

As exhaustively discussed in respondent's Answer and Memorandum, pursuant to Section 228 of the National Internal Revenue Code of 1997, as amended, in relation to Section 3.1.5 of Revenue Regulations 12-99, as amended, the taxpayer who originally filed his protest before the duly authorized representative of the CIR has two options if his protest is denied. The taxpayer may either (1) elevate their protest to the CIR within 30 days from denial, or (2) appeal within the same period to the CTA.

In case of inaction by the CIR on protests elevated to him by reason of denial by his duly authorized representative, a plain reading of Section 228, 1997 NIRC, in relation to Sections 3.1.5 and 3.1.6, RR No. 12-99 reveals that the CIR is only given the remaining days of the 180-day period from filing of the protest to the duly authorized representative within which to decide. Thereafter, the protest shall be elevated to the CTA within 30-days from receipt of the decision. If the CIR failed to act on the protest within the 180-day period, the same shall be considered as denial of the protest, and 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 30 days after receipt of such decision.

As found in the records, petitioner filed its protest on the disputed assessment on May 24, 2016. Further, records reveal that petitioner's additional relevant supporting documents were already attached to its protest. Thus, the 180-day period will be counted from the filing of its protest.

Counting 180-days from May 24, 2016, the OIC-Regional Director had until November 20, 2016 to render his decision. On August 4, 2016, petitioner received a copy of the Final Decision on Disputed Assessment denying petitioner's protest.

Petitioner sought reconsideration of the denial with the CIR by filing its request for reconsideration on September 3, 2016.

When petitioner sought reconsideration of the denial, the CIR had only the remaining 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/elevate its protest before this Court.

THE COURT *EN BANC*'S RULING

After a careful and thorough review of the factual incidents in this case, the Court *En Banc* finds that the Court in Division committed no reversible error in ruling that it had no jurisdiction over the Petition for Review in CTA Case No. 9563 and in denying petitioner's Motion for Reconsideration in said case for having been filed out of time.

An appeal to the CTA En Banc must be preceded by a timely filing of a motion for reconsideration with the CTA Division.

Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) reads as follows:

> "SECTION 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, **the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration** or new trial with the Division.
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> xxx xxx xxx

In the case of *Asia Trust Development Bank, Inc. vs. Commissioner of Internal Revenue*,[16] the Supreme held that in order for the CTA *En Banc* to take cognizance of an appeal via a petition for review, a **timely** motion for reconsideration or new trial must be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the "must" indicates that the filing of a prior motion is mandatory and not merely directory.

Relative thereto, Section 1, Rule 15 of the RRCTA provides the period within which a party must file a motion for reconsideration or new trial, to wit:

> "Rule 15
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> Motion for Reconsideration or New Trial
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> "Section 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court **by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question**."

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[16] G.R. Nos. 201530 & 201680-81, April 19, 2017.

Clearly from the foregoing, a motion for reconsideration must be filed within fifteen (15) days from receipt of the questioned decision, resolution or order of the CTA.

In this case, while petitioner filed a Motion for Reconsideration of the Court in Division's Decision dated July 23, 2019 in CTA Case No. 9563, there is a dispute as to the reckoning date of the 15-day period within which to file a motion for reconsideration.

Petitioner claims that the said period to file a Motion for Reconsideration before the Court in Division should be reckoned from the date its counsel actually received a copy of the assailed Decision on July 30, 2019, and not on July 26, 2019, the date appearing on the licensed courier, LBC's Tracker, which shows that it was received by a certain "Jen". Petitioner argues that "Jen", who allegedly received the notice of Decision on July 26, 2019 is not an employee of petitioner's counsel.

Petitioner's arguments deserve scant consideration.

Records show that a copy of the July 23, 2019 Decision of the Court in Division was sent thru LBC courier with tracking number 12683471292, addressed to petitioner's counsel at Rovero Tamayo & Partners, Unit M, 3rd Floor, 3/F Triple M Commercial Building, Doña Soledad Avenue, Better Living Brgy. Don Bosco, Parañaque City, Metro Manila, and that the same was received on July 26, 2019.

Although petitioner alleges that a copy of the Court in Division's Decision dated July 23, 2019 was received by petitioner's counsel only on July 30, 2019, petitioner admits however, that by mistake a certain "Jen" received the copy of the said decision on July 26, 2019.[17]

Apparently, the alleged recipient named "Jen" of the said decision knew petitioner's counsel as the said decision was thereafter forwarded to the latter allegedly on July 30, 2019.

To the mind of the Court, the receipt on July 26, 2019 by the person named "Jen" should be deemed receipt by petitioner's counsel as well. Petitioner has only itself to blame if the person named "Jen" took it upon herself to receive notices in behalf of petitioner's counsel despite lack of proper guideline.

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[17] Par. 37, Petition for Review, EB Docket, p. 9.

In *NIAConsult, Inc. et al., vs. NLRC, et al.,*[18] the Supreme Court pointed out that it was the responsibility of petitioners and their counsel to devise a system for the receipt of mail intended for them.

Hence, the Court *En Banc* cannot sustain petitioner's claim that the fifteen (15)-day period must be reckoned from July 30, 2019.

Having received the assailed Decision on July 26, 2019, petitioner had fifteen (15) days therefrom, or until August 10, 2019 to file its motion for reconsideration. However, as correctly noted by the Court in Division, since August 10, 2019 fell on a Saturday and August 12, 2019[19] (Monday), was declared a non-working holiday, petitioner had until August 13, 2019 (Tuesday), the next working day, to file its motion for reconsideration before the Court in Division.

Considering that petitioner filed its Motion for Reconsideration on August 14, 2019 via registered mail, the motion was filed out of time. Thus, the assailed Decision dated July 23, 2019 and Resolution dated October 24, 2019 of the Court in Division have become final and executory.

Petitioner also failed to timely file its judicial appeal before the Court in Division (CTA Case No. 9563)

Assuming *arguendo* that petitioner's Motion for Reconsideration before the Court in Division in CTA Case No. 9563 was filed on time, nevertheless, the Petition for Review in said case was also filed late. Hence, as correctly ruled upon by the Court in Division, it had no jurisdiction to take cognizance of the same.

On the other hand however, petitioner contends that the Court in Division has jurisdiction over CTA Case No. 9563. Allegedly, the issue of prescription of respondent's right to collect the deficiency taxes against petitioner falls under **"other matters"** over which the CTA has appellate jurisdiction pursuant to Section 7(a)(1) of RA No. 1125, as amended. Moreover, petitioner cites the Supreme Court case of *Commissioner of Internal Revenue vs. Hambrecht & Quist Phil., Inc.*,[20] and argues that the CTA has jurisdiction over the instant case to question and/or assail the validity of the alleged deficiency

[18] G.R. No. 108278, January 2, 1997.
[19] Proclamation No. 789 issued on August 8, 2019.
[20] G.R. No. 169225, November 17, 2010.

income tax, including fines and penalties against petition for taxable year 2011.

Section 7(a)(1) of Republic Act (RA) No. 1125,[21] as amended by RA No. 9282,[22] provides as follows, to wit:

> "SECTION 7. *Jurisdiction.* – The CTA shall exercise:
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> (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 relation thereto, or **<u>other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue,</u>**" *(Emphasis and underscoring supplied)*

The foregoing provisions state that the appellate jurisdiction of this Court is not limited to cases which involve the decisions of respondent CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arises out of the NIRC or related laws administered by the BIR.[23] In other words, among those instances which are appealable to the CTA also include "*other matters*" arising under the NIRC of other laws administered by the BIR.

Jurisprudence provides that those falling under the "other matters" clause include, but is not limited to, determination of the validity of a warrant of distraint and levy issued by the CIR[24] and prescription of the CIR's right to collect taxes.[25] In such cases, the CTA has the power to determine on whether collection was validly

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[21] AN ACT CREATING THE COURT OF TAX APPEALS.

[22] 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.

[23] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,* G.R. No. 169225, November 17, 2010.

[24] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[25] *Supra* note 23.

made by the BIR and this falls within the ambit of "other matters" arising under the NIRC of 1997, as amended, or other laws administered by the BIR.

In the instant case, petitioner invokes the issue of prescription of respondent's right to collect the subject deficiency taxes as falling under "other matters" over which the CTA has appellate jurisdiction.

It bears noting, however, that the exercise of the CTA's jurisdiction to rule on **"other matters"** is conditioned on the timeliness of the filing of the appeal.

Relative thereto, Section 11[26] of RA No. 1125, as amended by RA No. 9262 and Section 3(a) of Rule 8[27] of the Revised Rules of the Court of Tax Appeals (RRCTA) dictates that an appeal with the CTA must be made within thirty (30) days after the receipt of such **decision or ruling** issued by the CIR on disputed assessments, refunds of internal revenue, taxes, fees, or other charges, penalties in relation thereto, or the CIR's action on "**other matters"** arising under the NIRC or other laws administered by the BIR.

Such being the case, the mandatory thirty (30)-day period to appeal before the CTA must be reckoned from the time petitioner received a decision or ruling of the CIR assessing and collecting the subject deficiency taxes.

In this case, it is the FDDA, issued by OIC-Regional Director Atty. Jethro M. Sabariaga, received by petitioner on August 4,

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[26] "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, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2)."

[27] "SEC. 3. *Who may appeal; period to file petition.* –

(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review field within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx"

2016,[28] which was the last act by respondent's duly authorized representative to collect the subject deficiency income tax that should be the reckoning point of the thirty (30)-day period to appeal to the CTA. Counting thirty (30)-days therefrom, petitioner should have elevated its judicial appeal within thirty (30) days or until September 5, 2016. However, petitioner opted to file an administrative appeal before the CIR prior to filing its judicial appeal.

With the foregoing factual backdrop, We look into the timeliness of petitioner's availment of judicial recourse with this Court.

Section 228 of the NIRC of 1997, as amended, lays down the procedure upon which a taxpayer may protest an assessment, the pertinent provisions of which read 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:
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> xxx xxx xxx
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> 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.
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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.

[28] Exhibit "P-3", Division Docket – Vol. 1, pp. 136 to 137.

> **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)*

Relative thereto, Section 3.1.4 of Revenue Regulations (RR) No. 12-99,[29] as amended by RR No. 18-2013,[30] provides the taxpayer's options on disputed assessments, to wit:

> "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 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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> For request 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

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[29] 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 Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

letter 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. xxx xxx xxx

xxx xxx xxx

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may <u>either</u>: (1) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; **or <u>(ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from receipt of receipt of the said decision.</u>** 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 date of filing of the protest, the taxpayer may <u>either</u>: (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 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" (*Emphasis and underscoring supplied*)

Based on the foregoing provisions, in cases where a taxpayer's protest is denied by the CIR's duly authorized representative, a taxpayer is given two (2) alternative remedies, to either: (a) appeal to the CTA within thirty (30) days from the date of receipt of the representative's decision; or (b) to elevate his protest through a request for reconsideration to the CIR, within the same thirty (30)-day period, otherwise referred to as an "*administrative appeal*".

Thereafter, if the taxpayer's administrative appeal is not acted upon by the CIR within one hundred eighty (180) days from the filing of the protest, the concerned taxpayer may **either**: (i) appeal to the CTA within thirty (30) days after the expiration of the said 180-day period; or (ii) await the final decision of the CIR on the disputed assessment, and appeal such final decision to the CTA within thirty (30) days from receipt of a copy thereof.

In this case, and as mentioned earlier, an FDDA was issued by OIC-Regional Director Atty. Jethro M. Sabariaga, a duly authorized representative of respondent, which was received by petitioner on August 4, 2016.[31] Petitioner opted to file an *administrative appeal,*

[31] Exhibit "P-3", Division Docket – Vol. 1, pp. 136 to 137.

through a request for reconsideration of the FDDA, before respondent on September 20, 2016.[32]

Subsequently however, due to inaction of respondent on said *administrative appeal,* petitioner filed a Petition for Review before the Court in Division on April 3, 2017 docketed as CTA Case No. 9563. Hence, for the Court in Division to exercise jurisdiction over the Petition for Review in said case, the appeal must have been brought within thirty (30) days after the expiration of the 180-day period for the CIR to act on petitioner's request for reconsideration.

To be clear, the one hundred eighty (180)-day period referred to in Section 228 of the NIRC of 1997, as amended, and in Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, is confined only to the period within which either the CIR or his/her duly authorized representative may act on the initial protest against the Final Assessment Notice. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option is to wait for the CIR's decision before elevating its case to the CTA. In other words, when a taxpayer opts to file an *administrative appeal*, the CIR is not given a fresh or separate one hundred eighty (180)-day period within which to decide the administrative appeal.

Applying the foregoing guidelines to the instant case, We quote with approval the findings of the Court in Division, to wit:

> "The original protest of taxpayer against the FLD and the FANs were 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 the 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."

In this case, the one hundred eighty (180)-day period commenced on May 24, 2016 until November 20, 2016. From November 20, 2016, petitioner had thirty (30) days to file an appeal to the CTA or until December 20, 2016. However, petitioner filed its

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[32] Exhibit "P-4", Division Docket – Vol. 1, pp. 138 to 162; BIR Records, pp. 471 to 501.

Petition for Review in CTA Case No. 9563 only on April 3, 2017, clearly beyond the reglementary period. Consequently, the Court in Division was deprived of jurisdiction over said case.

It is a well-settled rule 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 the case on the merits.[33]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack jurisdiction. Accordingly, the assailed Decision dated July 23, 2019 and Resolution dated October 24, 2019, both rendered by the Court in Division in CTA Case No. 9563 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(No part)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice