REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PUBLIC SAFETY MUTUAL BENEFIT FUND, INC., represented by its President, MARIO A. AVENIDO, *Petitioner,*	**CTA AC NO. 214**
-versus-	Members: CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
ROSETTE F. LAQUIAN ACTING CITY TREASURER, SAN JUAN CITY, *Respondent.*	Promulgated: AUG 27 2019

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9:50 a.m.

DECISION

MINDARO-GRULLA, J.:

Submitted for decision on May 10, 2019 is a Petition for Review[1] filed on December 19, 2018 by petitioner Public Safety Mutual Benefit Fund, Inc. as represented by its President, Mr. Mario Avenido, under Section 3[2], Rule 8, 2005 Revised Rules of the Court of Tax Appeals, as amended, assailing the "Decision" dated October 26, 2018 issued by the Regional Trial Court, Branch 160, Pasig City, in Civil Case No. 75377, dismissing the petitioner's appeal for lack of merit.

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[1] Docket, Vol. I, pp. 8-47

[2] "SECTION 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 filed 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. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. . .x x x"

Petitioner Public Safety Mutual Benefit Fund, Inc. is a non-stock, non-profit domestic corporation organized as a mutual benefit association with business address at No. 318-320 corner 1st and 2nd West Crame Sts., Barangay West Crame, Santolan Road, San Juan City. Petitioner is represented by its President, Mr. Mario A. Avenido.[3]

On the other hand, respondent Rosette F. Laquian is the Acting City Treasurer of San Juan City with postal address in Office of the City Treasurer, Pinaglabanan St. corner Dr. P.A. Narciso St. Barangay Corazon de Jesus, San Juan City.

On October 29, 2015, respondent issued Tax Order of Payment[4] (TOP 1) assessing petitioner of deficiency local business tax for taxable years 2009 to 2015, amounting to a total of P122,108,041.10, inclusive of penalties and interests. The assessment was pursuant to Section 143(f) and 131 of Republic Act No. 7160.

After receipt of the TOP 1, on December 1, 2015, petitioner submitted a letter[5] to respondent informing her that petitioner is a mutual benefit association (MBA) pursuant to the Local Finance Circular No. 2-93 dated June 15, 1993 issued by the Bureau of Local Government Finance (BLGF), stating that it is not subject to local business tax.

On December 29, 2015, petitioner filed its protest letter[6] to the assessment.

In 2017, respondent issued another TOP (TOP 2)[7] DATED January 18, 2017 assessing petitioner of deficiency local business tax for the years of 2009 to 2017, amounting to a total of P160,185,097.80, inclusive of penalties and interests. Petitioner admits that it did not file any protest on TOP 2 considering that the previous protest for TOP 1 already covers the period CY 2009 to 2015.

On January 23, 2018, petitioner received by personal service a letter[8] dated September 5, 2017 denying the protest filed on December

[3] Annex "C", Petitioner for Review, Docket, Vol. I, pp. 55-62
[4] Annex "H", Petition for Review, Docket, Vol. I, pp. 112-113
[5] Annex "I", Petition for Review, Docket, Vol. I, p. 114
[6] Annex "K", Petition for Review, Docket, Vol. I, pp. 131-135
[7] Annex "M", Petition for Review, Docket, Vol. I, pp. 191-192
[8] Annex "N", Petition for Review, Docket, Vol. I, pp. 193-194

29, 2015. On January 25, 2018, petitioner received thru registered mail the same letter.

On February 22, 2018, petitioner filed a Petition for Review on Appeal[9] with the RTC – Branch 160 to set aside and cancel the TOP 1 as well as the TOP 2. However, in his Decision[10] dated October 26, 2018, RTC – Branch 160 denied the appeal for lack of merit. The pertinent and dispositive portions of the Decision state:

> "Neither of the parties point out the local legislation which imposes the tax being protested by appellant. The Court, thus, assumes that a local ordinance exists which imposes the disputed tax.
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> The parties are in agreement that the basis of taxation is Section 143 of the Local Government Code (LGC) which empowers a local government unit the authority to impose a tax on "banks and other financial institutions." On the other hand, Section 131 of the LGC, defines the phrasal term "banks and other financial institutions" as including "insurance companies." The appellee considers the appellant as an insurance company because it engages in the business of insurance. There could be no doubt that the appellant has obtained a license to sell insurance from the Insurance Commission. In a general sense, the appellant is an insurance company subject to the taxing power of the appellee pursuant to the LGC.
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> The appellant, however, takes a tax shield from an administrative issuance of the Bureau of Local Government Finance (BLGF) Local Finance Circular No. 2-93 which defines "insurance companies" as not including mutual benefit associations. The administrative circular, in effect, exempts the appellant from the tax power of the appellee. In other words, the BLGF by the stroke of a pen granted exemption by sheer definition to the appellant.
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> The appellee takes exception because exemption from taxation could only come from the legislature which exercises the power to tax. The BLGF has no authority to

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[9] Annex "O", Petition for Review, Docket, Vol. I, pp. 195-214
[10] Annex "B", Petition for Review, Docket, Vol. I, pp. 53-54

limit the scope of the taxing power conferred by the legislature upon LGU's.

It is basic that a tax exemption to be availed of by a taxpayer must emanate from a clear mandate of the law. For sure, BLGF Local Finance Circular No. 2-93 is not such legal mandate. Thus, the appellee is correct in assessing the appellant of its tax obligations to the LGU pursuant to the pertinent tax ordinance.

WHEREFORE, the appeal is dismissed for lack of merit.

SO ORDERED."

The Decision was received by petitioner on November 23, 2018. Hence, the instant petition was filed.

On January 30, 2019, respondent filed her Comment to the Petition for Review[11].

On March 28, 2019, petitioner's counsel Atty. Rizalina V. Lumbra filed a Notice of Withdrawal as Counsel, withdrawing her appearance as counsel of record of the petitioner.

On April 1, 2019, petitioner filed an Entry of Appearance, appointing Terencio R. Yumang, Jr. & Associates as its new counsel. This was noted by the Court in Resolution dated April 3, 2019.

This case was deemed submitted for decision on May 10, 2019[12], considering the Memorandum[13] for respondent was filed on March 26, 2019 while the Memorandum[14] for petitioner was filed on May 3, 2019.

STATEMENT OF ISSUES

Petitioner raised the following assignment of errors:

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[11] Docket, Vol. I, pp. 356-385
[12] Resolution dated May 10, 2019, Docket, Vol. II, p. 561
[13] Docket, Vol. II, pp. 482-505
[14] Docket, Vol. II, pp. 530-560

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"V. Assignment of Errors

A. The Trial Court erred in not considering PSMBFI as a MBA, the primary purpose of its creation being for the mutual benefit and protection of its members;

B. The Trial Court erred in disregarding BLGF Circular No. 2-93 and the Letter-Opinion of BLGF dated 14 January 2016;

C. The Trial Court erred in declaring that PSMBFI, a non stock non–profit MBA operating as an insurance company, is not exempt from payment of Business Tax for its insurance operations;

D. The Trial Court erred in not considering that the right of the LGU to issue Assessments for the years 2011 and 2012 has prescribed."

Petitioner's Arguments[15]

Petitioner asserts that local government units have the power to levy taxes but such power shall be exercised by the sanggunian of the LGU concerned through an appropriate ordinance. Thus, if the petitioner, a mutual benefit association, is indeed subject to local business tax, respondent has the burden to prove the existence of such ordinance specifically providing for it. Then, the tax statute must expressly provide for the imposition of tax on a mutual benefit association, as the latter is different from an insurance company.

Petitioner maintains that it is a mutual benefit association and not an insurance company contemplated by Section 143(f)[16] of the LGC, as amended. To support its argument, petitioner referred the definition "insurance company" under the Sections 190[17] [*sic*] and

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[15] Memorandum, Docket, Vol. II, pp. 530-560

[16] SEC. 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:

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(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

[17] Refers to Section 184 of the ICP:

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403[18] [*sic*] of the Insurance Code of the Philippines, which excludes mutual benefit associations. Considering the governing law on insurance companies provides that mutual benefit associations are not considered as insurance companies, petitioner is not subject to local business tax.

Moreover, petitioner posits that the assessments are invalid in violation of the due process requirement under Section 1[19], Article III of the 1987 Philippine Constitution, as nothing is mentioned in the questioned assessments which would lead it to understand the reason behind the assessment of local business tax which is of substantial amount.

As to the argument of respondent that TOP 2 should be upheld as petitioner failed to file a protest, petitioner contends that respondent failed to take into account that TOP 2 merely added CYs 2016 and 2017 to the contents of TOP 1. Hence, though assessments for CYs 2009 to 2015 were contained in TOP 2, the same is merely reiteration of TOP 1, which was already protested by petitioner.

Petitioner further argues that the right to assess local business tax for 2005 to 2012 has already prescribed, since the TOP 1 was only issued on November 3, 2015 while TOP 2 was issued on January 18, 2017.

"Sec. 184. For purposes of this Code, the term *"insurer"* or *"insurance company"* shall include all individuals, partnerships, associations, or corporations, including government-owned or controlled corporations or entities, engaged as principals in the insurance business, excepting mutual benefit associations. Unless the context otherwise requires, the terms shall also include professional reinsurers defined in section two hundred eighty. *"Domestic company"* shall include companies formed, organized or existing under the laws of the Philippines. *"Foreign company"* when used without limitation shall include companies formed, organized, or existing under any laws other than those of the Philippines."

[18] Refers to Section 390 of the ICP:

"Sec. 390. Any society, association or corporation, without capital stock, formed or organized not for profit but mainly for the purpose of paying sick benefits to members, or of furnishing financial support to members while out of employment, or of paying to relatives of deceased members of fixed or any sum of money, irrespective of whether such aim or purpose is carried out by means of fixed dues or assessments collected regularly from the members, or of providing, by the issuance of certificates of insurance, payment of its members of accident or life insurance benefits out of such fixed and regular dues or assessments, but in no case shall include any society, association, or corporation with such mutual benefit features and which shall be carried out purely from voluntary contributions collected not regularly and or no fixed amount from whomsoever may contribute, shall be known as a mutual benefit association within the intent of this Code."

[19] Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

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On the filing of the petition with the RTC-Branch 160, petitioner argues that petition was timely filed on February 20, 2018. It avers that the law is clear in stating that the thirty (30)-day period to file an appeal before the trial court may be reckoned from two events (i) the date of receipt of the decision of the local government unit concerned, or (ii) in cases of inaction, the expiration of the sixty (60)-day period to act on the protest. The records bear that petitioner received the September 5, 2017 Letter-Denial on its Protest only on January 23, 2018, from which the petitioner is given thirty (30) days to file the RTC petition; which was timely filed on February 20, 2018.

Respondent's Counter-Arguments[20]

On the other hand, respondent counters that petitioner operates as an insurance company – a financial institution that is liable to pay local business tax under Section 143(f), in reference to Section 151[21], of the LGC. She avers that as defined under Section 131(e)[22] of the LGC, "banks and other financial institutions" include insurance companies that are liable to pay business taxes.

Respondent claims that petitioner admitted in its petition that it is operating as an insurance company by providing life insurance coverage to all its members, as well as financial material aid to them and their families, under the supervision of the Insurance Commission and obtains its funds primarily from the contribution of members and premiums from other insurance plans. As an insurance company it is liable to pay business tax under Article J (Business Tax), Section 2J.02 of Ordinance No. 47, Series of 2003[23], for the taxable period from 2009 to 2013 while for taxable years 2014 up to present, Article J (Business Tax), Section 2J.02 of City Ordinance No. 91, Series of 2013[24].

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[20] Memorandum, Docket. Vol. II, pp. 482-505

[21] SEC. 151. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code. The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

[22] SEC. 131. *Definition of Terms.* - When used in this Title, the term:

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(e) "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;

[23] Otherwise known as "The San Juan Municipal Revenue Code"

[24] Otherwise known as "City of San Juan Revenue Code of 2013"

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Further, respondent assails the validity of BLGF Local Finance Circular No. 2-93 insofar as it amends the LGC when it excluded MBAs from the term "insurance companies" that are subject to business taxes provided in the LGC and in the City's ordinances.

Respondent insists that petitioner's right to challenge the assessments have already prescribed pursuant to Section 195 of the LGC. She claims that since petitioner filed its protest to TOP 1 on December 29, 2015, the Treasurer has sixty days or until February 28, 2016 to decide the protest. After the lapse of the 60-day period without any decision from the Treasurer, the law provides that petitioner has thirty (30) days from February 28, 2016 or until March 29, 2016 to file an appeal with the RTC. However, petitioner only filed its Petition for Review on Appeal on February 20, 2018 – almost two years after the prescribed period to appeal. Further, since petitioner failed to file a protest to the TOP 2 but proceeded to contest the same before the Trial Court, the TOP 2 assessment attained finality, thus, the right to challenge said assessment has already prescribed.

DISCUSSION/RULING

The right to appeal the assessment before the RTC has already prescribed

Before resolving the issues raised on the validity of the assessment, the Court deems it proper to determine whether or not petitioner's right to appeal has already prescribed.

Section 195 of the Republic Act No. 7160, as amended, otherwise known as the "The Local Government Code of 1991" (LGC), provides:

> "SECTION 195. Protest of Assessment. - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. **The local treasurer**

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shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**" (*Emphasis and underscoring supplied.*)

Based on the aforequoted provision, the local treasurer has sixty (60) days to decide the protest. Should the local treasurer find the protest wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayers shall have thirty (30) days to file an appeal from (1) the receipt of the denial of the protest, OR (2) from the lapse of the sixty day period for the local treasurer to decide on the protest. Failure to file an appeal within the prescribed period makes the assessment conclusive and unappealable.

In the case of *China Banking Corporation vs. City Treasurer of Manila*[25], the Supreme Court agreed with the CTA *En Banc* that the petitioner in the case lost its right to appeal when it filed its appeal with the RTC one (1) day late, to wit:

"Decision of the CTA En Banc

On appeal, the CTA En Banc affirmed the ruling of the CTA Division in toto, reiterating that the petition for review was filed out of time. It explained that from January 15, 2007, the date when CBC filed its protest, it had sixty (60) days or until March 16, 2007 to await the decision of the City Treasurer. Considering that no action was taken by the City Treasurer, CBC had until April 16, 2007 or 30 days from March 16, 2007, (April 15, 2007 being a Sunday), within which to appeal the inaction of the City Treasurer with the RTC, pursuant to Section 195 of the LGC. Upon examination, however, the CTA En Banc found that when CBC filed its petition for review before the RTC,

[25] G.R. No. 204117, July 1, 2015

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it was already one day late. Thus, it lost its right to appeal and the assessment, dated January 11, 2007, became conclusive and unappealable. The CTA En Banc then concluded that CBC was precluded from interposing the defense of legality or validity of the assessment.

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In its Memorandum, CBC insisted on the invalidity of the City Treasurer's assessment, this time, claiming that its petition for review filed with the RTC was timely filed. It explained that the 60-day period within which the City Treasurer should have acted on the protest, and the consequent 30-day period within which it had to appeal the inaction of the City Treasurer should have been reckoned not from January 15, 2007, when it filed its letter questioning the imposition and paid the assessed amount, but from March 27, 2007, the day it filed the letter reiterating its objection to the City Treasurer imposition of ₱154,398.50 and demanding the return of the said amount. With the reckoning point being March 27, 2007, CBC argued that the petition for review was filed well within the reglementary period because it had until June 25, 2007 to file the said appeal.

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The Court, however, is of the view that the period within which the City Treasurer must act on the protest, and the consequent period to appeal a "denial due to inaction," should be reckoned from January 15, 2007, the date CBC filed its protest, and not March 27, 2007. Consequently, the Court finds that the CTA En Banc did not err in ruling that CBC had lost its right to challenge the City Treasurer's "denial due to inaction." On this matter, Section 195 of the LGC is clear:

> SECTION 195. Protest of Assessment. -When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of

> assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing . If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable**.
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> [Emphasis Supplied]
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> Time and again, it has been held that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, the Court declares that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law."

In the instant case, what is being contested is when the 30-day period to file an appeal should commence. Petitioner claims that the 30-day period should be reckoned from its receipt of the denial on January 23, 2018 while respondent argues that the 30-day period should commence from the lapse of the 60-day period or from March 26, 2016.

As provided under Section 195 of the LGC, the local treasurer has sixty (60) days from the time of the filing to decide on the protest.

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Within said period prescribed by law, the local treasurer may either issue a denial of the protest or not act on the protest. Logically, it can be surmised that the intention of the law is for the local treasurer to issue the denial of the protest before the lapse of the 60-day period. Considering the foregoing, the 30-day period to file an appeal should be reckoned from (1) from the receipt of the denial before the lapse of the 60-day period, OR (2) upon the lapse of the 60-day period for the local treasurer to decide on the protest.

Petitioner filed its protest to the assessment on December 29, 2016. Counting 60 days from the filing of the protest, respondent has 60 days or until February 28, 2016 to decide on the protest. As no decision was issued on February 28, 2016, petitioner has 30 days or until March 26, 2016 to file an appeal with the RTC. However, petitioner only filed its petition on February 20, 2018. Thus, said petition is filed out of time.

In this regard, the RTC-Branch 160 has no jurisdiction over this case as the petition was filed beyond the period prescribed by law to file an appeal. As pronounced by the Supreme Court in the *China Banking* case, perfection of an appeal is not only mandatory but also jurisdictional.

TOP 2 has become conclusive and unappealable

Respondent avers that since petitioner failed to file a protest on TOP 2, the said assessment has become conclusive and unappealable.

On the other hand, petitioner contends that respondent failed to take into account that TOP 2 merely added CYs 2016 and 2017 to the contents of TOP 1. Hence, though assessments for CYs 2009 to 2015 were contained in TOP 2, the same is merely a reiteration of TOP 1, which was protested by petitioner. It further added that since it already established that being a mutual benefit association is not subject to local business tax, TOP 1 and TOP 2 are null and void.

The argument of petitioner is without merit.

Pursuant to Section 195 of the LGC, when a notice of assessment is received by the taxpayer, he may file a written protest within sixty

(60) days from the receipt of such notice. Otherwise, the assessment becomes conclusive and unappealable.

In the case at bar, petitioner failed to file a protest to TOP 2 dated January 18, 2017. Thus, for failure to file a protest, the assessment has become conclusive and unappealable pursuant to Section 195 of the LGC.

In view of the foregoing, the Court finds the Petition for Review on Appeal filed by the petitioner on February 20, 2018 with RTC-Branch 160 as filed out of time. Hence, the RTC–Branch 160 has no jurisdiction to act upon petition, and the assessments TOP 1 and TOP 2 have become conclusive and unappealable.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Public Safety Mutual Benefit Fund, Inc. is **DISMISSED**, for lack of jurisdiction. Accordingly, the Decision dated October 26, 2018 rendered by the RTC-Branch 160 in Civil Case No. 75377, is **CANCELLED** and **SET ASIDE**. The assessments covering the taxable years 2009 to 2017 are **AFFIRMED**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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