REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

KUEHNE + NAGEL, INC.,
Petitioner,

-*versus*-

CITY OF PARAÑAQUE AND ANTHONY I. PULMANO, in his capacity as the City Treasurer of Parañaque,
Respondent.

CTA AC No. 206

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 18 2019 ; 3:00 pm

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DECISION

MANAHAN, *J.:*

This case involves the *Petition for Review*[1] filed by Petitioner Kuehne + Nagel, Inc. (KNI) pursuant to Section 11, in relation to Section 7(a)(3), both of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, seeking the reversal and denial of the Regional Trial Court (RTC), Parañaque City, Branch 258's Orders dated January 29, 2018 and May 29, 2018, and to remand the instant case to the same court.

THE PARTIES

Petitioner KNI is a domestic corporation existing under and by virtue of Philippine laws, with principal office address at 5th Floor Unit 501-H,507-508-H, Harbor Drive, Five E-Com Center Pacific Drive Extension Mall of Asia Complex, Pasay City.[2] It is engaged in the business of international freight and/or cargo consolidation and forwarding by means of air and sea transport.[3]

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[1] Docket, CTA AC No. 206, pp. 8-21.
[2] *Id.*, Petition for Review, p. 9.
[3] *Id.* at 11.

Respondent City of Parañaque is a local government unit while respondent Anthony I. Pulmano is the duly appointed City Treasurer of Parañaque City, who is empowered to perform the duties of said office, including *inter alia*, the collection of all local taxes, fees and charges, respectively.[4]

THE FACTS

On September 2, 2014, petitioner KNI received a Notice of Assessment dated September 1, 2014 from the respondent City Treasurer requiring the former to pay the amount of Php13,270,785.27, representing additional business tax, inclusive of surcharges and penalties, for CY 2009 to 2013.[5]

On November 3, 2014 petitioner filed its protest on the said notice of assessment.[6]

On March 30, 2015, petitioner filed a supplemental protest which was dismissed in a letter of denial from the respondents on May 15, 2015.[7]

On June 15, 2015, petitioner filed a complaint before the RTC of Parañaque City-Branch 258 which was dismissed under the assailed Order dated January 29, 2018 for being filed beyond the prescribed period under Section 195 of Republic Act (RA) No. 7160, as amended, otherwise known as the Local Government Code (LGC) of 1991.

Petitioner then moved for the reconsideration of such dismissal but was again denied by the said court under the assailed Order dated May 29, 2018 for its failure to prove that said complaint was filed within the said prescriptive period. Said Order was received by the petitioner on June 7, 2018.[8]

On July 9, 2018, petitioner filed the instant petition.

On July 20, 2018, this Court ordered[9] the respondents to file their comment[10] on the said petition which they filed on

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[4] Docket, Petition for Review, p. 9.
[5] *Id.*, petitioner's Memorandum, p. 114; respondents' Memorandum, p. 127.
[6] *Id.*
[7] *Id.*
[8] *Id.*, Petition for Review, p. 10.
[9] *Id.*, Resolution dated July 20, 2018, p.95.
[10] *Id.*, Comment (to the Petition for Review), pp. 96-101.

August 8, 2018 through registered mail and was received by this Court on August 15, 2018.

On September 4, 2018, this Court ordered the parties to submit their respective memoranda and the RTC-Parañaque City, Branch 258, to elevate the records of the instant case.[11]

Petitioner submitted its Memorandum[12] on October 1, 2018 while the respondents submitted their Memorandum[13] on October 23, 2018 through registered mail. After receipt of the last Memorandum on November 8, 2018, the Court deemed the case submitted for decision.[14]

ISSUE

Whether the complaint of petitioner in the RTC-Parañaque City, Branch 258 dated June 15, 2015 was filed out of time.

Petitioner's Arguments[15]

Petitioner argues that the RTC-Parañaque City, Branch 258, gravely erred in dismissing its complaint considering that it had timely filed the same on June 15, 2015 through registered mail.

Respondent's Counter-Arguments[16]

Respondent argues that the subject assessment had become final and unappealable on February 2, 2015, hence, the filing of the complaint on June 15, 2015 was immaterial.

RULING OF THE COURT

The Court has jurisdiction over the Petition for Review

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[11] Docket, Resolution dated September 4, 2018, p. 104.
[12] *Id.*, pp. 112-123.
[13] *Id.*, pp. 127-133.
[14] *Id.*, Resolution dated November 15, 2018, p. 136.
[15] *Supra.*, Note 12.
[16] *Supra.*, Note 13.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[17] The jurisdiction of the CTA regarding local tax cases is provided under Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (3) **Decisions, orders or resolutions of the Regional Trial Courts in local tax cases** originally decided or resolved by them in the exercise of their original or appellate jurisdiction;" (*Emphasis supplied*)

Similarly, Section 3(a)(3) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) **Decisions, resolutions or orders of the Regional Trial Courts in local tax cases** decided or resolved by them **in the exercise of their original jurisdiction**;" (*Emphasis supplied*)

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only

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[17] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

jurisdiction is to dismiss the case. The court could not decide the case on the merits.[18]

The records of the instant case reveal that after the filing of the protest, petitioner subsequently filed a supplemental protest which was eventually denied by the respondent. Petitioner elevated the case to the RTC-Parañaque City, Branch 258.

Said Court subsequently dismissed the case due to prescription. When petitioner moved for the reconsideration of said dismissal, the case was denied anew. After receiving such court order on June 7, 2018, petitioner filed the instant petition on July 9, 2018.

The factual antecedent of the case shows that the said RTC exercised original jurisdiction thereon. In the case of *China Banking Corporation v. City Treasurer of Manila*[19], the Supreme Court differentiated when a court is exercising its original or appellate jurisdiction on local tax cases, to wit:

> Clearly, with the passage of R.A. No. 9282, the authority to exercise either original or appellate jurisdiction over local tax cases depended on the amount of the claim. In cases where the RTC exercises appellate jurisdiction, it necessarily follows that there must be a court capable of exercising original jurisdiction – otherwise there would be no appeal over which the RTC would exercise appellate jurisdiction. The Court cannot consider the City Treasurer as the entity that exercises original jurisdiction not only because it is not a "court" within the context of Batas Pambansa (B.P.) Blg. 129, but also because, as explained above, "B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts." Verily, unlike in the case of the CA, B.P. 129 does not confer appellate jurisdiction on the RTC over rulings made by non-judicial entities. The RTC exercises appellate jurisdiction only from cases decided by the Metropolitan, Municipal, and Municipal Circuit Trial Courts in the proper cases. The nature of the jurisdiction exercised by these courts is **original**, considering it will be the first time that a court will take judicial cognizance of a case instituted for judicial action.

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[18] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.
[19] G.R. No. 204117, July 01, 2015.

Applying the above-mentioned ruling of the high Court to the case filed by the petitioner in the RTC-Parañaque City, Branch 258 after the denial of its protest by respondent, it is "the first time that a court will take judicial cognizance of a case instituted for judicial action." Hence, the nature of the jurisdiction exercised by said court was original.

Further, Section 3(a), Rule 8 of the RRCTA provides that the decision or ruling *inter alia* of the Regional Trial Court in the exercise of its original jurisdiction should be filed within thirty (30) days from receipt of the copy of such decision or ruling. Applying said provision, petitioner had until July 7, 2018, from June 7, 2018, to file a petition before this Court. However, July 7, 2018 fell on a Saturday, hence, the filing was made on the next working day which was July 9, 2018, Monday. The filing of the instant petition on July 9, 2018 was timely filed.

Thus, considering the timely filing of the petition on the decision or ruling of the RTC in the exercise of its original jurisdiction, this Court acquires jurisdiction over the instant case.

Prescription has already set in at the time of the filing of the complaint before the RTC

Petitioner insists that it had timely filed the complaint before RTC-Parañaque City, Branch 258 on June 15, 2015. Such reliance is totally mistaken.

The factual antecedents of this case reveal that petitioner, after receiving respondents' notice of assessment on September 2, 2014, filed a protest on the said assessment on November 3, 2014. On March 30, 2015, petitioner filed a supplemental protest which was denied by the respondent on May 15, 2015. Thus, petitioner filed a complaint in the RTC-Parañaque City, Branch 258 on June 15, 2015 which was eventually dismissed by said court.

In its Order dated January 29, 2018, the lower court reckoned the date of the prescription period from May 15, 2015 which was the date petitioner received a denial letter from the respondent after it filed a supplemental protest on March 30, 2015. It appears from the records of the case that the said court received the complaint only on June 25, 2015 and the filing fees were only paid on June 26, 2015.

The applicable provision in the instant case is Section 195, RA No. 7160, as amended, which pertains to the protest of an assessment made by the respondent, to wit:

> **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 cancelling 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. (*Underscore ours*)

The above-mentioned provision provides that after the taxpayer filed its protest on the notice of assessment issued by the local treasurer, the latter should decide within sixty (60) days from the filing of said protest. The local treasurer may decide favorably or not on such protest and if said decision will not be favorable to the taxpayer, the latter has thirty (30) days within which to elevate such unfavorable decision to a court of competent jurisdiction, otherwise the assessment becomes conclusive and unappealable.

Noteworthy in the last sentence of said provision is also the condition that if the local treasurer does not come up with a decision after the lapse of the 60-day period from the filing of the protest, the taxpayer shall likewise have 30 days to appeal such inaction which, in effect, constitutes a "denial due to inaction." [20]

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[20] *Id.*

Applying the above-mentioned provision on the factual antecedents of the case, this Court rules that the filing of the complaint before the RTC was beyond the period prescribed under Section 195 of RA No. 7160.

Petitioner should be aware that it filed the protest against the subject assessment on November 3, 2014. Hence, respondent Pulmano had 60 days from said date or until January 2, 2015 to decide on said protest. However, respondent Pulmano failed to decide on the said protest, hence, such failure shall be considered a "denial due to inaction."

As such, petitioner then had 30 days or until February 1, 2015 to file a complaint in a court of competent jurisdiction which is the RTC considering that the amount of the assessment is beyond the jurisdictional ambit of Metropolitan, Municipal, and Municipal Circuit Trial Courts.[21] However, petitioner only filed the complaint before the RTC on June 15, 2015 which was way beyond the last day of filing or on February 1, 2015.

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.[22]

The RTC was correct in dismissing the case on the ground of prescription. However, it failed to reckon the period of prescription for the filing of petitioner's complaint from February 1, 2015 which was the 30th day from the expiry date of the 60-day period to act on the protest. Instead, it took cognizance of respondents' reply letter to petitioner's supplemental protest.

In the above-mentioned *China Banking* case[23], the Supreme Court ruled that the 60-day period under Section 195 of RA No. 7160, as amended, should be reckoned from the time of the filing of the protest and not on other subsequent events, to wit:

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[21] Section 19, Batas Pambansa Blg. 129, as amended by Republic Act No. 7691.
[22] *Commissioner on Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.
[23] *Supra.*, Note 19.

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.** [Emphasis supplied]

Petitioner's supplemental protest is of no moment. It merely augmented the protest made on November 3, 2014. Thus, the period of the filing of the subject complaint has already prescribed from February 2, 2015 and beyond.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Orders dated January 29, 2018 and May 29, 2018 are hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
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