REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

SERVICE RESOURCES, INC.,
Petitioner,

- versus -

PASIG CITY REPRESENTED BY HON. ROBERT EUSEBIO, CITY MAYOR AND MARITA A. CALAJE, OIC-CITY TREASURER,
Respondents.

CTA AC NO. 243

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
NOV 02 2022
1:05 p.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Service Resources, Inc.'s (**petitioner**'s) "Motion for Reconsideration (of the Honorable Court's Decision dated 3 June 2022)" (**MR**) filed on 21 June 2022, with respondents Pasig City represented by Hon. Robert Eusebio, City Mayor (**respondent City**) and Marita A. Calaje, OIC-City Treasurer's (**respondent Treasurer**'s) "Comment/Opposition (To the Motion for Reconsideration dated 21 June 2022)" (**Comment/Opposition**) filed on 11 July 2022.[1]

The MR assails the Court's Decision dated 03 June 2022. The dispositive portion of which reads:

[1] Received by the Court on 21 July 2022.

...

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner Service Resources, Inc. on 09 October 2020 is hereby **DENIED** for lack of merit.

SO ORDERED.

...

In the MR, petitioner contends that it timely filed an appeal with the court of competent jurisdiction within thirty (30) days from receipt of the notice of denial of its protest, in accordance with Section 195[2] of the Local Government Code (**LGC**) of 1991, as amended.

According to petitioner, a taxpayer aggrieved by the action or inaction of the local treasurer on protest has two (2) options: (1) it may appeal with the court within 30 days from receipt of the denial; or, (2) it may appeal with the court within 30 days from the lapse of the sixty (60)-day period within which the local treasurer may decide the protest. According to petitioner, the use of preposition "or" in the aforementioned Section 195 of the LGC of 1991, as amended, shows that the remedies granted to the taxpayer are alternatives.

Here, petitioner opted to wait for respondent's action instead of appealing the inaction after the lapse of the said 60-day period. Simply put, petitioner insists that the 30-day period to file an appeal should be without regard to whether the taxpayer received the notice of denial within 60 days from filing of protest or after the lapse of the said period.

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[2] **SEC. 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.

Petitioner likens the same to the rule on protest of deficiency tax assessment by the Bureau of Internal Revenue (**BIR**) where the taxpayer may await the decision of the Commissioner of Internal Revenue (**CIR**) on disputed assessment even if the same was rendered beyond the one hundred eighty (180)-day period to decide.

Petitioner further submits that the 2nd Notice of Assessment[3] (**2nd Notice**) can only be deemed a denial of petitioner's protest on the 1st Notice of Assessment[4] (**1st** Notice) and added that it cannot be faulted for replying to the 2nd Notice as it was made simply to give respondents a chance to reconsider the assessment before lodging an appeal with the court.

Lastly, petitioner contends that the 1st and 2nd Notices are both unlawful as they contain unjust, excessive, oppressive and confiscatory assessments, in addition to being riddled with irregularities. Petitioner elaborates that the assessments are so excessive that, if implemented together with the 30% corporate income tax and other taxes imposed by the national government, they would obliterate petitioner's profit, expend its working capital and eventually cause the closure of its business.

In their Comment/Opposition, respondents maintain that the Court did not err in holding that the 1st Notice has become conclusive and unappealable when petitioner failed to question the same within 30 days from the lapse of the 60-day period for respondent Treasurer to decide (or the denial due to inaction).

Additionally, respondents counter petitioner's assertion that the assessments are excessive, unjust, oppressive and unlawful, as the same were based on records, data and information gathered by respondent Treasurer. After all, assessments are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise.

After due consideration of the arguments raised by the parties, the Court finds no merit in petitioner's MR.

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3 Annex "M", Petition for Review, Division Docket, pp. 93-95.
4 Annex "K", id., pp. 86-88.

Petitioner's main contention is that Section 195 of the LGC of 1991, as amended, should be interpreted to mean that the taxpayer has the option of appealing within 30 days from either: (1) the receipt of the denial of its protest (whether the same was issued within the 60-day period to decide or not); or, (2) the lapse of the 60-day period within which the local treasurer may decide the protest.

However, such argument contravenes with existing jurisprudence.

In *China Banking Corporation v. City Treasurer of Manila*[5], the taxpayer therein filed its protest on 15 January 2007. Counting 60 days therefrom, the local treasurer had until 16 March 2007 within which to decide the protest. Four (4) days after the said deadline, the taxpayer received a letter from the local treasurer acknowledging the receipt of payment under protest. The Supreme Court thus recognized that the failure of the local treasurer to act on the protest is tantamount to a "denial due to inaction", *viz*:

> ...
>
> 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:
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> ...
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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.
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> ...

[5] G.R. No. 204117, 01 July 2015; Citation omitted and emphasis supplied.

In the case of *Team Pacific Corporation v. Josephine Daza, in her capacity as Municipal Treasurer of Taguig*[6], the Supreme Court also ruled that the local treasurer's inaction is appealable to a court of competent jurisdiction, to wit:

> ...
>
> A taxpayer dissatisfied with a **local treasurer's** denial of or **inaction on his protest over an assessment** has thirty (30) days within which to appeal to the court of competent jurisdiction. Under the law, said period is to be reckoned from the taxpayer's receipt of the denial of his protest or **the lapse of the sixty (60)-day period within which the local treasurer is required to decide the protest, from the moment of its filing. This much is clear from Section 195 of the Local Government Code**...
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> ...

Lastly, this Court, in *Public Safety Mutual Benefit Fund, Inc., represented by its President Mario A. Avenido v. Rosette F. Laquian, Acting City Treasurer, San Juan City*[7], held that the taxpayer is duty-bound to elevate a "denial due to inaction" to a court of competent jurisdiction, otherwise, the assessment becomes final and unappealable, to wit:

> ...
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> ... [I]t is evident that under Section 195 of the LGC, the failure of the local treasurer to act on the taxpayer's protest within the 60-day period is tantamount to a "denial due to inaction." **The taxpayer is mandated to elevate the said "denial due to inaction" to a court of competent jurisdiction, within a period of thirty (30) days reckoned from the lapse of the 60-day period**. It bears stressing that the **perfection of appeal within the period prescribed under Section 195 of the LGC is <u>not only mandatory but also jurisdictional</u>**.
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> **Further, it is relevant to take note of the use of the word "shall" in Section 195 of the LGC, as the word "shall" underscores the mandatory character thereof. It is a word of command, one which always has or must be given a compulsory meaning, and is generally imperative or mandatory**. Thus, contrary to petitioner's stance, the provision

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6 G.R. No. 167732; 11 July 2012; Emphasis supplied.

7 CTA EB No. 2198 (CTA AC No. 214), 15 January 2021; Citation omitted, emphasis and underscoring supplied. Note that the Petition for Review on Certiorari filed by petitioner therein was already denied by the Supreme Court in G.R. No. 256741 for failure to show any reversible error.

> under <u>**Section 195 of the LGC as well as the period indicated therein are mandatory and not merely directory in nature**</u>.
>
> ...

Petitioner, however, further claims that, similar to the rule on disputed BIR assessments, the taxpayer may likewise await the decision of the local treasurer even if the same was issued beyond the 60-day period to decide.

Again, We do not find the said contention meritorious.

In case of assessments made by the BIR, its rules, particularly, Revenue Regulations (**RR**) No. 12-99[8], as amended by RR No. 18-2013[9], *specifically* provide, to wit:

> ...
>
> 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 either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.**
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> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.[10]
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> ...

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

9 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

10 Emphasis supplied.

However, the same cannot be applied in case of the local treasurer's assessment in the absence of a law or rule particularly providing such remedy in favor of the taxpayer. As it is, the plain meaning of Section 195 of the LGC of 1991, as amended, as interpreted by the Supreme Court and this Court in the aforementioned cases, must be applied.

From the foregoing, petitioner's argument that it may still file an appeal within 30 days from receipt of the action of respondent Treasurer (despite the same being issued after the lapse of the 60-day period for the latter to decide) is thus clearly bereft of merit.

In sum, the Court stands by its ruling that petitioner failed to timely file an appeal with the court of competent jurisdiction within 30 days from the lapse of the 60-day for respondent Treasurer to decide the protest on the 1st Notice, making the same already conclusive and unappealable.

WHEREFORE, premises considered, petitioner Service Resources, Inc.'s "Motion for Reconsideration (of the Honorable Court's Decision dated 3 June 2022)" filed on 21 June 2022 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice