REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FOLARES PHARMACEUTICALS INC., Petitioner,	**CTA CASE NO. 10400** Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: 4:00 pm

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RESOLUTION

FERRER-FLORES, J.:

Before this Court is petitioner's **Motion for Reconsideration** filed on August 22, 2025, with respondent's **Comment/Opposition (on Petitioner's Motion for Reconsideration dated August 21, 2025)** filed *via* registered mail on September 23, 2025, and received by the Court on September 29, 2025.

On July 18, 2025, the Court promulgated a Decision (assailed Decision) dismissing the *Petition for Review* for lack of jurisdiction due to petitioner's failure to file a valid protest against respondent's deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), fringe benefit tax (FBT), documentary stamp tax (DST) and compromise penalty assessments for taxable year (TY) 2011, the dispositive portion of which is quoted as follows:

> **WHEREFORE**, premises considered, the present **Petition for Review** is **DISMISSED**, for this Court's lack of jurisdiction.
>
> **SO ORDERED.**[1]

In its *Motion*, petitioner contends that its letter dated February 9, 2015 has complied with the requirements laid down by the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing rules and regulations for a valid protest. Petitioner explains that the letter did not explicitly declare that it was requesting for a reconsideration or a reinvestigation because it was the first time that petitioner received an assessment notice informing it of the issues and findings of deficiency, and to use the term "reconsideration" or "reinvestigation" would be procedurally incorrect and grammatically inappropriate. In any case, petitioner stresses that the said letter was accepted by the Bureau of Internal Revenue (BIR) as its protest letter and that the BIR did not object to the tenor and form of petitioner's protest letter. The BIR even adjusted the deficiency taxes and penalty assessments based on the said protest letter by either increasing the basic deficiency tax or reducing the amounts on the deficiency income tax, EWT, VAT, FBT, DST and compromise penalty assessments. With the BIR's pronouncements and actions, petitioner submits that the letter dated February 9, 2015 was considered a valid protest in compliance with Section 228 of the NIRC of 1997, as amended, and the implementing rules and regulations issued thereto.

Petitioner further asserts that it provided relevant documents to support its contentions as set forth in its protest letter. Petitioner assails the BIR's arbitrary pronouncement that it failed to submit supporting documents to validate its claim, considering that it immediately submitted supporting documents and attached the same to its protest letter. Petitioner also argues that the ruling in the case *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division and Citysuper, Incorporated* (*Citysuper case*),[1] as cited in the assailed Decision, is not applicable in the present case as the facts and circumstances are not the same. Petitioner avers that in the said case, the Commissioner of Internal Revenue (CIR) has not yet issued a Final Decision on the Disputed Assessment (FDDA) and, as such, the *Petition for Review* was based only on the Formal Assessment Notice (FAN) which, logically, deprived the Court of jurisdiction to entertain the *Petition*. Lastly, petitioner maintains that the Court committed grave abuse of discretion when it declared that the FDDA dated October 13, 2020 cannot be considered as respondent's decision on a disputed assessment which is appealable to this Court. Petitioner asserts that the Court cannot substitute its discretion into the wisdom and decision of the CIR on questions which are primarily within the prerogative of the BIR, specifically, the Court cannot classify a valid protest as void considering that from the very beginning the BIR has already accepted it as a valid protest letter both in substance and form.

On the other hand, in his *Comment*, respondent submits that the filing of the present *Petition for Review* is premature, thus, this Court has no

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[1] G.R. No. 239464, May 10, 2021.

jurisdiction over the present case. Respondent reiterates the Court's ruling that petitioner's protest dated February 9, 2015 failed to comply with Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, by not stating the nature of petitioner's letter, that is, whether it is a request for reconsideration or reinvestigation. Respondent maintains that the Court correctly ruled that the FDDA dated October 13, 2020 cannot be considered as respondent's decision on a disputed assessment which is appealable to this Court since petitioner's letter dated February 9, 2015 is void and cannot be considered a valid protest. As such, respondent claims that there was no valid administrative protest to speak of and no decision of a disputed assessment to assail.

Lastly, respondent asserts that the Government is not estopped by the mistake or errors of its official or agents. Respondent explains that the errors or mistakes of public officers due to administrative oversight do not prevent the correct application of the mandates of a statute particularly in the absence of any of the unusual circumstances and exemptions. More importantly, the equitable principle of estoppel cannot be used to defeat the law.

After due consideration, the Court finds petitioner's *Motion for Reconsideration* bereft of merit.

To reiterate, Section 228 of the NIRC of 1997, as amended, provides that a tax assessment issued by the BIR may be protested administratively, within 30 days from receipt thereof, by filing either a request for reconsideration or reinvestigation, **in such form and manner as may be prescribed by implementing rules and regulations**. To implement the foregoing, the BIR issued RR No. 12-99,[2] as amended by RR No. 18-2013,[3] wherein Section 3 thereof requires that the **protest must state** the following: (1) **the nature thereof (whether *reconsideration* or *reinvestigation***, and in case of the latter, it must specify the newly discovered or additional evidence the taxpayer intends to present); (2) date of the assessment notice; and, (3) the applicable law, rules and regulations, or jurisprudence on which his protest is based; **otherwise, the protest shall be considered void, and without force and effect**.

Here, the Court found that petitioner's letter dated February 9, 2015[4] did not comply with Section 228 of the NIRC of 1997, as amended, in relation to Section 3 of RR No. 12-99, as amended by RR No. 18-2013, since the said

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[2] SUBJECT: 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", dated September 6, 1999.

[3] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment", dated November 28, 2013.

[4] Exhibit "P-8", Docket – Vol. II, pp. 465 to 469.

letter failed to state the nature of the protest thereof, *i.e.*, whether it is a request for *reconsideration* or *reinvestigation*. This fact was also confirmed by petitioner's witness, Ms. Flordeliza A. Leviste, who testified during trial that petitioner neither filed a request for *reconsideration* or *reinvestigation*[5] and, more recently, petitioner also admitted in the present *Motion* that the letter dated February 9, 2015 did not explicitly declare that it was requesting for a reconsideration or reinvestigation of the case. Correspondingly, petitioner in essence openly admitted its non-compliance to the requirement of stating the nature of the protest.

Petitioner argues that it did not explicitly state in its letter dated February 9, 2015 that it was requesting for a reconsideration or reinvestigation of the deficiency assessment because it would be procedurally incorrect and grammatically inappropriate to use the terms reconsideration or reinvestigation in its letter as it was the first time that the issues and findings on the deficiency taxes and penalty assessments were relayed to petitioner.

The Court is not convinced.

A perusal of the records shows that respondent issued the Preliminary Assessment Notice (PAN) Parts I and II with Details of Discrepancies, on December 19, 2014,[6] finding petitioner liable for deficiency income tax, VAT, EWT, FBT, DST, and compromise penalty, for TY 2011. Petitioner's witness, Ms. Leviste, also admitted during the hearing held on November 3, 2022, that petitioner received the PAN on January 6, 2015.[7] Hence, it was erroneous for petitioner to argue that no PAN was issued and received in this case and that it was only the first time in the FAN dated January 13, 2015 that petitioner received an assessment notice informing it of the issues and findings of deficiency.

With regard to the application of the *Citysuper case,*[8] petitioner relies heavily on the fact that there was no FDDA issued in the said case, hence, arguing that the said case is not on all fours in the present case as the facts and circumstances are not the same.

Again, the Court is not convinced.

In the *Citysuper* case, the Supreme Court held that Section 228 of the NIRC of 1997, as amended, requires that administrative protests against assessments conform to the rules and regulations issued by the BIR, and

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[5] Exhibit "P-Re-1" (Q&A Nos. 9 to 10), Docket – Vol. II, p. 517.
[6] Exhibit "R-5", BIR Records (Folder 2 of 2), pp. 547 to 552.
[7] Transcript of Stenographic Notes (TSN) dated November 3, 2022, p. 8.
[8] Supra Note 1.

failure to comply with the requirements of RR No. 18-2013, as mandated by Section 228 of the NIRC of 1997, as amended, renders the protest void. When a taxpayer files a petition for review before the Court of Tax Appeals (CTA) without validly contesting the assessment with the CIR, the appeal is premature and the CTA has no jurisdiction – there is no administrative protest to speak of and no decision on a disputed assessment to assail. Evidently, regardless of whether there was an issued FDDA or not, the ruling in the *Citysuper* case is clear that a protest is void for failing to comply with the requirements of RR No. 18-2013, as mandated by Section 228 of the NIRC of 1997, as amended.

Moreover, there was also no grave abuse of discretion in declaring that petitioner's letter dated February 9, 2015 is a void protest and, consequently, the FDDA dated October 13, 2020 cannot be considered as respondent's decision on a disputed assessment. This is for the same reason that the assessment already became final, executory, and demandable as there was no valid protest in the first place and no disputed assessment to assail.

Moreover, grave abuse of discretion is meant such capricious and whimsical exercise of judgment amounting to lack of jurisdiction. Mere abuse of discretion is not enough. It must be *grave* abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[9] There is also grave abuse of discretion (1) when an act is done contrary to the Constitution, the law or jurisprudence; or, (2) when it is executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.[10]

It must be emphasized that Section 8 of Republic Act No. 1125,[11] as amended, describes this Court as a **court of record** and as such, it is required to conduct a formal trial (trial *de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[12] As cases filed before this Court are **litigated *de novo***, the party-litigants must prove every minute aspect of their cases by presenting, formally offering, and submitting its evidence to the Court.[13] Moreover, every court has the positive duty to consider and give due regard to everything on record that is relevant and competent to its resolution of the ultimate issue presented for its adjudication.[14]

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[9] *Tañada, et al. v. Angara, et al.*, G.R. No. 118295, May 2, 1997.
[10] *Information Technology Foundation of the Philippines, et al. v. Commission on Elections, et al.*, G.R. No. 159139, January 13, 2004.
[11] AN ACT CREATING THE COURT OF TAX APPEALS.
[12] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[13] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.
[14] *Commissioner of Internal Revenue v. Ocier*, G.R. No. 192023, November 21, 2018.

Applying the foregoing, in the performance of its positive duty, this Court determined and ruled on factual issues based on the stipulations, admissions and evidence presented in this case, and applied the applicable law, jurisprudence and rules and regulations.

On a final note, even assuming that the parties deemed the letter dated February 9, 2015 as a valid and acceptable protest letter and that the FDDA dated October 13, 2020 is respondent's final decision, conclusions of facts of the parties do not bind the Court, who is the trier of facts.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its *Motion for Reconsideration*, the Court finds no compelling reason to reverse or modify the Decision promulgated on July 18, 2025.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice