REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

EMPIRE AUTOMATION PHILS INC., Petitioner,	**CTA CASE NO. 10924**
-versus-	Members: **RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 15 2025 9:30 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a *Petition for Review*, filed on July 18, 2022, seeking the reversal and nullification of the assessment against petitioner for alleged deficiency income tax and value-added tax for Taxable Year ("TY") 2015.

The Parties[1]

Petitioner is a domestic corporation primarily engaged in installation of security system cameras and similar items.

Respondent Commissioner of Internal Revenue ("CIR") is the chief official of the Bureau of Internal Revenue ("BIR"), tasked with enforcement of internal revenue laws.

[1] Petition for Review, p. 2, *Rollo* Vol. 1, p. 7.

The Facts

Pursuant to a Letter of Authority covering TY 2015, respondent issued a Preliminary Assessment Notice against petitioner on November 14, 2018. Petitioner received this on November 23, 2018 and protested the same on November 27, 2018.[2]

Respondent then issued a Formal Assessment Notice ("FAN") on December 20, 2018, which petitioner received on January 9, 2019 and protested on January 25, 2019 by requesting a reinvestigation of its case. It then submitted additional documents on March 12, 2019.[3]

On November 23, 2021, respondent issued a Final Decision on Disputed Assessment ("FDDA"), sending it to petitioner on November 25, 2021.[4]

Aggrieved, petitioner filed a Request for Reconsideration with respondent on December 20, 2021.[5]

With no action from respondent on the Request for Reconsideration, petitioner filed the instant Petition on July 18, 2022, exactly 210 days after it filed the Request.

Respondent filed his Answer[6] via registered mail on October 14, 2022. Incorporated into the same, however, was a Motion to Dismiss, where respondent argued that this Court lacked jurisdiction over the case.

This Court denied the Motion to Dismiss soon after. We found that the Motion was based on an unsigned Judicial Affidavit of one of respondent's witnesses and that the allegations made needed a full-blown trial to fully thresh out.[7]

As such, a full-blown trial ensued, with petitioner presenting witnesses Norie Anne Rances[8] and Independent Certified Public Accountant Leandro M. Lontok[9] and respondent only presenting witness Revenue Officer ("RO") Melissa Carla R. Baes.[10] While the Court denied a number of petitioner's

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2 Petition for Review, p. 3, *id.* at 8.
3 Petition for Review, p. 3-4, *id.* at 8-9.
4 Petition for Review, p. 4, *id.* at 9.
5 *Id.*
6 *Id.* at 242-250.
7 Resolution, dated December 15, 2022, pp. 1-2, *id.* at 273-274.
8 Minutes of the Hearing, held on September 14, 2023, *Rollo* Vol. 2, p. 508.
9 Minutes of the Hearing, held on February 27, 2024, *id.* at 596.
10 Minutes of the Hearing, held on July 11, 2024, *id.* at 612.

evidence for failure to submit either the duly marked copies or any copies of a number of its exhibits,[11] We admitted all of respondent's offered evidence.[12]

After petitioner filed its Memorandum on November 7, 2024[13] and respondent filed his on November 21, 2024,[14] the Court submitted this case for decision on December 3, 2024.[15]

Hence, this Decision.

The Issues[16]

The parties raised two major issues for the resolution of this Court:

(1) Whether We have jurisdiction over this case; and

(2) Whether petitioner is liable for the assessed deficiency taxes.

Arguments of the Parties

Petitioner's Arguments

Petitioner raises the following arguments in its Memorandum:

(1) As petitioner timely filed its Petition 180+30 days after it filed its Request for Reconsideration to the FDDA, the Court assumed jurisdiction over this case;[17]

(2) The assessment is void as in the FDDA, respondent merely reiterated the findings included in the PAN and FAN without considering the documents submitted in support of petitioner's protest to the FAN;[18]

(3) The assessed undeclared revenue was actually reimbursements made by clients that were mistakenly posted in the general ledger;[19] *y*

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11 Resolution, dated June 6, 2024, p. 1, *id.* at 609.
12 Resolution, dated October 1, 2024, p. 1, *id.* at 626.
13 *Id.* at 629-649.
14 *Id.* at 651-662.
15 Minute Resolution, dated December 3, 2024, *id.*, unpaginated.
16 Pre-Trial Order, pp. 2-3, *Rollo* Vol. 1, pp. 358-359.
17 Memorandum for Petitioner, pp. 4-6, *Rollo* Vol. 2, pp. 632-634.
18 Memorandum for Petitioner, pp. 6-9, *id.* at 634-637.
19 Memorandum for Petitioner, pp. 10-15, *id.* at 638-643.

(4) In the FDDA, respondent adjusted the assessed unsupported expenses without explaining the reasons behind such adjustments, rendering these void;[20]

(5) The assessment for some of the alleged deficiency value-added tax ("VAT") had already prescribed;[21]

(6) Respondent erred in not allowing petitioner's claimed input VAT;[22] and

(7) As there was no underdeclaration in petitioner's return, the imposed 50% surcharge should be cancelled.[23]

Respondent's Arguments

Respondent counters the above as follows:

(1) As ruled by no less than the Supreme Court, the law does not provide the CIR with an additional 180-day period to act on protests to FDDAs, so the instant Petition was filed late, and this Court has no jurisdiction over the case;[24]

(2) As having appeals pending before both the CIR and the Court of Tax Appeals ("CTA") constitutes forum shopping, both appeals should be dismissed;[25] and

(3) Petitioner's evidence, the testimony of its witness, and even the ICPA's report do not sufficiently prove the merit in its case.[26]

The Ruling of the Court

The Petition must be dismissed.

The last two paragraphs of *Section 228 of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), lay down the mechanics for protesting an assessment:

> [The CIR's 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 the

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[20] Memorandum for Petitioner, pp. 15-16, *id.* at 643-644.
[21] Memorandum for Petitioner, pp. 17-18, *id.* at 645-646.
[22] Memorandum for Petitioner, pp. 18-19, *id.* at 646-647.
[23] Memorandum for Petitioner, p. 19, *id.* at 647.
[24] Memorandum for Respondent, pp. 3-5, *id.* at 653-655.
[25] Memorandum for Respondent, pp. 5-9, *id.* at 655-659.
[26] Memorandum for Respondent, pp. 9-10, *id.* at 659-660.

> protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> 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.
> (Italics supplied.)

Revenue Regulations ("*RR*") *No. 12-99, as amended by RR No. 18-13*, clarified that the assessment discussed in the above provision is the FAN. It also clarified the specifics of protesting FANs:

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

Relevant to the case at bar, if the CIR does not act on a taxpayer's protest or administrative appeal, the taxpayer has a period of 180+30, or 210, days within which to file a Petition for Review before the CTA. Alternatively, it can await the CIR's decision even past the 180-day period.

Also of relevance is how the *Revenue Regulations* allows a taxpayer to further protest a denial of its protest to the FAN.

Finally, in case the CIR does not timely act on the protest, the options to either (a) file a Petition 180+30 days from the filing of the protest; or (b) await the CIR's decision and file a Petition 30 days from receipt of that are mutually exclusive. What this means in practice is that if the CIR does not act upon the protest and the taxpayer does not file a Petition within 30 days from the lapse of the 180-day period, the taxpayer's only recourse is to await the CIR's decision and file a Petition 30 days after that.

Putting these two together, petitioner insists that it had 180+30 days from the filing of its Request for Reconsideration to the FDDA within which to file its Petition. Since the same was filed within the 180+30 day period, this Court has jurisdiction over this case.

Petition is mistaken.

In *Nueva Ecija II Electric Cooperative, Inc. Area II v. Commissioner of Internal Revenue*[27] ("*NEECA*"), the Supreme Court observed that while *RR No. 12-99, as amended by RR No. 18-13*, allows a taxpayer to further administratively protest a FDDA, it does *not* provide a new 180-day period for the CIR's action on such and consequently does *not* provide a new 180+30 day period for the filing of a Petition for Review:

> As correctly ruled by the CTA EB, Section 228 of Republic Act (RA) No. 8424, or the National Internal Revenue Code, as amended (hereafter, Tax Code) unmistakably provides that the one hundred eighty (180)-day period should be reckoned from the "submission of documents," which in this case was on 19 September 2016. Perforce, the statutory 180-day period lapsed on 18 March 2017. From such point, petitioner had thirty (30) days, or until 17 April 2017, to elevate the case to the CTA. However, it filed its Petition only on 2 June 2017, which is beyond the reglementary period provided by the law. Notably, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for alternative courses of action to the

[27] G.R. No. 258101 (Notice), April 19, 2022.

> taxpayer upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of respondent Commissioner of Internal Revenue (respondent), including the option of elevating the protest to the respondent himself through a request for reconsideration. *However, nowhere in said provision does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal.* As aptly observed by the CTA EB, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law. Necessarily, taxpayers must exercise their rights in the manner and within the periods provided by statute and the pertinent regulations. "It bears to stress that the perfection of an appeal within the statutory period is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review."
> (Citations omitted; italics supplied.)

In *NEECA*, as in this case, the taxpayer submitted additional documents in support of its protest to the CIR's FAN, received a FDDA, further protested the FDDA, then filed a Petition for Review before this Court's First Division, treating its protest to the FDDA as the beginning of the 180+30-day period. However, this Court's First Division dismissed the Petition, holding that the 180+30-day period began when the taxpayer submitted its supporting documents. The taxpayer's filing of a protest to the FDDA, 46 days after it submitted its supporting documents, did *not* produce a new 180+30-day period. The original period continued to run, giving the taxpayer only 134+30 days to file its Petition.[28] This ruling was affirmed by the CTA *En Banc* and by the Supreme Court, as cited above.

Following *NEECA*, the CTA *En Banc* has been consistent in enforcing this construction of the prescriptive period. An example of this would be *Commissioner of Internal Revenue v. Yu*,[29] where the CTA *En Banc* reiterated that the 180-day period, and thus the 180+30-day period, provided by *Section 228 of the NIRC* and *RR No. 12-99, as amended by RR No. 18-13*, 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/FLD." The latter case of *Segaya v. Commissioner of Internal Revenue*[30] similarly followed the *dictum* of *NEECA*.

Considering the above, the 180+30-day period for the filing of a Petition in this case began when petitioner filed additional documents in support of its protest to the FAN on March 12, 2019. This gave petitioner until October 8, 2019. Neither respondent's issuance of the FDDA on November 23, 2021 nor petitioner's filing of a Request for Reconsideration to said FDDA on December 20, 2021 produced a new 180+30-day period. That period already lapsed on October 8, 2019. Considering that petitioner did not file a Petition after receipt of the FDDA and opted to further administratively protest the same, its only valid recourse was to await respondent's decision on

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[28] *Nueva Ecija II Electric Cooperative, Inc. – Area 2*, CTA Case No. 9605, January 17, 2020.
[29] CTA EB Case No. 2352, August 16, 2022.
[30] CTA EB Case No. 2526, December 13, 2022.

its Request for Reconsideration and, if still necessary, file a Petition within 30 days from its receipt of that.

It did not do this, rendering the instant Petition for Review prematurely filed. This Court has no jurisdiction over it, and We have no choice but to dismiss this case.

It is also no longer necessary to discuss the parties' other arguments. Indeed, We *cannot* discuss said arguments, lacking the jurisdiction and authority to do so.

ACCORDINGLY, the instant *Petition for Review*, filed on July 18, 2022, is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

On leave
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Acting 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.

ROMAN G. DEL ROSARIO
Presiding Justice