**REPUBLIC OF THE PHILIPPINES**
***Court of Tax Appeals***
**QUEZON CITY**

***Second Division***

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| **AGM VENTURES ENTERPRISES, INC.,** *Petitioner,* | **CTA CASE NO. 11144** |
| | Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.* |
| *-versus-* | |
| **BUREAU OF INTERNAL REVENUE, represented by the COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: JUN 22 2023 1:41 p.m. |

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# RESOLUTION

For the Court's resolution is a Petition for Review, filed on 28 April 2023.

On 31 May 2022,[1] petitioner allegedly received respondent's Final Decision on Disputed Assessment ("FDDA"), dated 23 May 2022,[2] assessing it for a total of Thirty-Six Million Two Hundred Forty-Two Thousand Five Hundred Eighty-Two and 83/100 Pesos (Php 36,242,582.83) for taxable year ("TY") 2018. Petitioner replied to this issuance with a Request for Reconsideration, received by the Bureau of Internal Revenue ("BIR") on 30 June 2022 and by the Office of the Regional Director, Revenue Region 9B, LaQueMar, San Pablo City, on 6 July 2022, arguing that it should only be liable for Four Hundred Thirty-Nine Thousand, One Hundred Sixty-Four and 34/100 Pesos (Php 439,164.34) for TY 2018.[3]

Respondent did not formally act upon this Request for Reconsideration. He instead issued a Warrant of Garnishment[4] and a Warrant of Distraint and/or Levy,[5] both dated 6 March 2023. Petitioner allegedly received these on 10 March 2023[6] and responded with a Request to Lift the Warrant of Distraint/Levy and Warrant of Garnishments ("Request to Lift"), dated 13

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[1] Annex "C", Petition for Review, Records.
[2] Annexes "A" and "B", *id.*
[3] Annex "C", *id.*
[4] Annex "D", *id.*
[5] Annex "E", *id.*
[6] Annex "F", *id.*

March 2023 and received by the Office of the Regional Director, Revenue Region 9B, LaQueMar, San Pablo City, on 14 March 2023.[7]

On 28 March 2023, petitioner filed the instant Petition, praying that the Court (a) issue a Temporary Restraining Order and an Injunction to stop the assailed Warrants; and (b) declare petitioner liable for only Php 439,164.34 for TY 2018.[8]

In support of the first prayer, petitioner cites the similarity of its situation to that of the taxpayer in ***Light Rail Transit Authority v. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue*** ("***LRTA Case***"),[9] where the Supreme Court deemed a Warrant of Distraint and/or Levy void and of no force or effect for having emanated from an assessment whose appeal was still pending and which was consequently still non-demandable.

In support of its second prayer, petitioner adopts the arguments, computations, and discussions stated in its Request for Reconsideration and submits various documents to further support its computations.[10]

Finally, petitioner once again cites the ***LRTA Case*** to argue that the Court of Tax Appeals ("CTA") has jurisdiction over the instant case. It specifically invokes the taxpayer's option to await respondent's final decision on its protest before raising an appeal to the CTA, even if said final decision is issued beyond the 180-day period provided by ***Sec. 228 of the National Internal Revenue Code of 1997, as amended*** ("***NIRC***"), as discussed in the ***LRTA Case***.

Despite this, the instant Petition for Review must be dismissed for lack of jurisdiction.

The periods allowed by law for elevating a protest, either denied or not acted upon by respondent, to the CTA is set by ***Sec. 228 of the NIRC***, as follows:

> "**SEC. 228.** ***Protesting of Assessment.*** — x x x
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> x x x
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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,**

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[7] *Ibid.*
[8] Petitioner for Review, *id.*
[9] G.R. No. 231238, 20 June 2022.
[10] Petitioner for Review, Records.

> **or from the lapse of the one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable."
> (Emphasis, Ours.)

These periods would later be clarified in ***Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*** ("***RCBC Case***"),[11] where the Supreme Court identified the option for taxpayers to await respondent's final decision on a protest before seeking judicial remedies from the CTA, even if said decision is rendered beyond the 180-day period:

> "In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) **await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision**. However, these options are mutually exclusive, and resort to one bars the application of the other."
> (Emphasis, Ours.)

This was reiterated in ***Lascona Land Co., Inc. v Commissioner of Internal Revenue*** ("***Lascona Case***"):[12]

> "In *RCBC v. CIR*, the Court has held that in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) **await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.**
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> x x x
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> Therefore, as in Section 228 [of the *NIRC*], when the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, [it] naturally expects the CIR to decide either positively or negatively. **A taxpayer cannot be prejudiced if [it] chooses to wait for the final decision of the CIR on the protested assessment.** More so, because the law and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment."
> (Citations omitted; emphasis, Ours.)

In other words, if the Commissioner of Internal Revenue ("CIR") does not act upon a taxpayer's protest within the 180-day period granted by law, said taxpayer could file a Petition for Review before the CTA within thirty (30) days after the lapse of said period, but it may alternatively wait for the CIR's final decision, even if the same is issued beyond the 180-day period, and raise an appeal to the CTA thirty (30) days from receipt of that.

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[11] G.R. No. 168498, 24 April 2007.
[12] G.R. No. 171251, 5 March 2012.

Most recently, the ***LRTA Case***, as cited by petitioner, reaffirmed that the CTA can assume jurisdiction over a Petition for Review filed beyond the usual 180+30-day period, provided that the taxpayer waited for the final decision of the CIR on its protest and filed the Petition for Review within thirty (30) days from receipt of said decision:

> "**Here, there was inaction on the part of the respondent on the petitioner's appeal of the Final Decision on a Disputed Assessment. And under the circumstances, this Court finds that the petitioner genuinely chose to await the Commissioner's final decision on its appeal.** To our mind, the option was made in good faith, not as an afterthought or 'legal maneuver' to claim that the assessment had not yet become final. This is shown by the petitioner's replies to the Revenue District Officer when the latter issued the Preliminary Collection Letter and Final Notice Before Seizure. In both reply letters, petitioner said that 'it will act on the matter as soon as we receive the Commissioner's decision on our appeal.' **Indeed, petitioner filed the Petition for Review with the Court of Tax Appeals only after the issuance of the June 30, 2014 Letter that decided its May 6, 2011 appeal to the Office of the Commissioner.**"
> (Citations omitted; emphasis, Ours.)

Contrary to petitioner's contentions, however, the ***LRTA Case*** is not identical to its own, and neither of the options under discussion are currently applicable to the case at bar.

It should be noted that the two options are *mutually exclusive*. If a taxpayer decides to raise an appeal from the CIR's inaction, it must do so within thirty (30) days from the lapse of the 180-day period. It cannot do so afterwards. On the other hand, if a taxpayer decides to await the CIR's final decision on its protest, it must wait for such a decision to arrive. It cannot suddenly change its mind and appeal the CIR's inaction after the 180+30-day period has run its course. In other words, once thirty (30) days have passed from the lapse of the 180-day period, a taxpayer seeking to bring an assessment dispute before the CTA has no choice but to await the CIR's final decision on its protest.

The above was clearly stated in the ***RCBC Case*** when the Supreme Court qualified that "these options are mutually exclusive, and resort to one bars the application of the other." It was also emphasized in the ***Lascona Case***, as follows:

> "It must be emphasized, however, that in case of the inaction of the CIR on the protested assessment, while we reiterate - the taxpayer has two options, 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 on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, **these options are mutually exclusive and resort to one bars the application of the other.**"
> (Emphasis present in the original.)

This mutual exclusivity was not a problem in the ***LRTA Case***. There, petitioner Light Rail Transit Authority ("LRTA") appealed the CIR's FDDA, issued by the Regional Director of Revenue Region No. 8, on 6 May 2011. Later, a Revenue District Officer issued a Warrant of Distraint and/or Levy, which was received by LRTA on 17 May 2012 and protested by it. The CIR's final decision on the matter was a Letter, issued by the Regional Director, dated 30 June 2014, and received by LRTA on 12 August 2014. LRTA would then file a Petition for Review before the CTA on 11 September 2014.

Note that LRTA waited for the CIR's final decision on its protest before it filed a Petition for Review with the CTA. It did not file an appeal to the CIR's inaction within the 180+30-day period from its appeal to the FDDA on 6 May 2011. Neither did it file a Petition for Review immediately after protesting the Warrant of Distraint and/or Levy it received on 17 May 2012. It instead waited until its receipt of the 30 June 2014 Letter on 12 August 2014. Its filing of a Petition for Review on 11 September 2014, exactly thirty (30) days from its receipt of the Letter, was thus timely.

Like LRTA, petitioner in the instant case protested the FDDA it had received and opted to wait for respondent's decision on the matter. Like LRTA, petitioner also protested the Warrants issued against it. Unlike LRTA, however, petitioner filed a Petition for Review with this Court *before* receiving any final decision on its Request for Reconsideration. It did not actually wait for respondent's final decision on the assessment dispute, given that petitioner's Request for Reconsideration is still pending. The 30 June 2014 Letter from the ***LRTA Case*** sees no equivalent here. As such, there is currently no final decision from which petitioner can appeal to this Court.

However, petitioner is also barred from appealing from respondent's inaction on its Request for Reconsideration. Having received the Request on 30 June 2022, respondent had until 27 December 2022 within which to act on said Request. Petitioner then had until 26 January 2023 within which to file a Petition for Review on respondent's inaction. Unfortunately, it filed the instant Petition only on 28 April 2023, or 92 days after the lapse of the 180+30-day period. The Petition thus cannot fall under this Court's jurisdiction over inaction by the CIR.

Being prematurely filed, for the purpose of appealing respondent's final decision, and belatedly filed, for the purpose of appealing respondent's inaction, the instant Petition for Review does not fall within this Court's jurisdiction. We are thus prevented from acting on either the assailed Warrants or the disputed assessment. Accordingly, the Court has no option but to dismiss this case.

**WHEREFORE**, the instant Petition for Review, docketed as CTA Case No. 11144 is hereby **DISMISSED** for lack of jurisdiction.

**SO ORDERED.**

Ma. Belen

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice