REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ROBERTO O. YANGCO,
Petitioner,

- versus -

THE REVENUE DISTRICT OFFICER OF REVENUE DISTRICT NO. 8 OF THE BUREAU OF INTERNAL REVENUE, BAGUIO CITY, and THE REGIONAL DIRECTOR OF REVENUE REGION NO. 2 OF THE BUREAU OF INTERNAL REVENUE, BAGUIO CITY,
Respondents.

CTA CASE NO. 9388

Members:

CASTAÑEDA, JR., *Chairperson, and*
MINDARO-GRULLA, *JJ.*

Promulgated:

OCT 10 2019 2:58 pm

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RESOLUTION

MINDARO-GRULLA, J.:

For this Court's resolution is petitioner's **Motion for Reconsideration**, filed through registered mail on June 10, 2019 and received by this Court on June 24, 2019, with respondent's **Comment Re: Petitioner's Motion for Reconsideration**, filed on August 1, 2019.

Petitioner move for reconsideration of the Court's Decision dated May 23, 2019 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**.

In his motion, petitioner argues that assuming without conceding he filed through his counsel the protest of the disputed tax assessment with the Commissioner of Internal Revenue (CIR) beyond the thirty-day period to do so, his right to due process was still violated by respondents when their various notices or official communications were not duly or properly served on him or his duly authorized representative.

Petitioner contends that technical or procedural rules must give way to the protection and preservation of taxpayers' substantial rights as they too have the Constitutional right to substantive due process, that is, protection from undue deprivation of property when there is failure on the part of the State or the Government to observe the due process right of a citizen or taxpayer.

On the other hand, respondent states that this Court is correct in ruling that it has no jurisdiction over the case.

The Court finds the instant motion bereft of merit.

Section 228 of the NIRC of 1997, as amended, provides the manner upon which a taxpayer may question and appeal any deficiency tax assessment issued against it, to wit:

> "SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> **Within a period to be prescribed by implementing rules and regulations**, the taxpayer

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shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such 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 of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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." (*Emphasis Supplied*)

To reiterate, Section 228 of the NIRC of 1997, as amended, pertains to the implementing rules and regulations on the period, form, and manner of protesting an assessment for it to be considered a disputed one. Relevantly, Revenue Regulations (RR) No. 12-99[1], as amended, specifically Section 3.1.5, provides the period, form, and manner of a disputed assessment, *viz.*:

"**3.1.5 Disputed Assessment**. - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. x x x

xxx xxx xxx

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[1] "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", September 6, 1999.

> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: **Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner**.
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> xxx xxx xxx." (Emphasis supplied)

Based on the foregoing, upon receipt of the CIR's final decision on the disputed assessment, the taxpayer can file a petition for review with this Court within thirty (30) days after receipt of a copy of such decision. However, if the final decision was only rendered by the CIR's duly authorized representative, the taxpayer is given the option of whether (1) to elevate his protest to the CIR upon receipt of denial of protest by the authorized representative, or (2) to directly appeal such denial to the Court of Tax Appeals, again, both within thirty (30) days from receipt of the denial of the protest.

While RR No. 12-99, as amended, allows the final decision of the CIR's duly authorized representative to be appealed to the CIR, such must be done within the prescribed period provided for. Petitioner should have elevated his protest with the CIR within thirty (30) days from the receipt of the final decision of the Revenue District Officer. Instead, it took him eighty-two (82) days after receipt of the final decision to file an appeal with the CIR. Clearly, the elevation of the protest with the CIR by petitioner was filed out of the 30-day period.

In *Commissioner of Internal Revenue vs. Bank of the Philippine Island*[2], the Supreme Court connected the issue of jurisdiction of the Court of Tax Appeals to the failure to timely file a protest, and we quote:

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[2] G.R. No. 134062, April 7, 2007.

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> "The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they become final and unappealable. **Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments**." (Emphasis supplied)

It must be emphasized that when resolving issues relating to jurisdiction, it must be kept in mind that jurisdiction 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.[3] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case.[4]

We must remind petitioner that we cannot take questions involving jurisdiction lightly and simply set it aside to avoid foreseen negative consequences should the Court not take cognizance of the instant Petition. Jurisdiction is the power and authority of the court to hear, try, and decide a case.[5] A judgment rendered by a court without jurisdiction is null and void.[6]

Accordingly, in view of the finding that respondent's deficiency assessments had already became final, demandable and executory, this Court is deprived of jurisdiction to rule on the fallibility, much less the substantive validity, of the subject assessments.

Finding no compelling reason to reconsider or modify the assailed Decision, we reiterate our ruling that the Court has no jurisdiction to take cognizance of the instant Petition for Review.

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[3] *Carmen Danao Malana, et.al. vs. Benigno Tappa, et.al.*, G.R. No. 181303, September 17, 2009 quoting *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[4] *Mitsubishi Motors Phils. Corp. vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[5] *Glynna Foronda-Crystal vs. Aniana Lawas Son*, G.R. No. 221815, November 29, 2017.
[6] *Jose Cabaral Tiu vs. First Plywood Corporation*, G.R. No. 176123, March 10, 2010.

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

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice