REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

NUEVA ECIJA II ELECTRIC COOPERATIVE, INC. – Area 2,
Petitioner,

CTA EB NO. 2319
(CTA Case No. 9605)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 28 2021 2:59 p.m.

x - x

RESOLUTION

For the Court's resolution is petitioner's "Motion for Reconsideration (Resolution dated 10 March 2021)" (**MR**) filed on 15 April 2021.

On 10 March 2021, the Court dismissed petitioner's Petition for Review filed on 03 August 2020 on the ground of non-compliance with this Court's Resolution dated 07 October 2020 which ordered petitioner to submit a Verification and Certification Against Forum Shopping within five (5) days from receipt of such order. A copy of such Resolution was sent to counsel for petitioner's office address *via* registered mail.

A closer scrutiny of the records shows that, petitioner, in its Motion for Extension of Time to File Petition for Review filed on 21 July 2020, has manifested its counsel's change of address. Petitioner's subsequent filing of its Manifestation-Compliance on 19 January 2021, after receiving a copy of the Court's 07 October 2020 Resolution on 14 January 2021, is therefore deemed to have been timely filed.

Consequently, petitioner's MR filed on 15 April 2021 should be granted and the Court's Resolution dated 10 March 2021 should be set aside accordingly.

With the issue of petitioner's compliance with the Court's order settled what is now left for the Court's determination is whether its instant Petition for Review should be given due course.

We resolve.

Records show that this Court's First Division dismissed petitioner's original Petition for Review through the assailed Decision dated 17 January 2020 in CTA Case No. 9605 entitled *Nueva Ecija II Electric Cooperative, Inc. – Area 2 v. Commissioner of Internal Revenue* (**assailed Decision**) for lack of jurisdiction, concluding that the petition was filed out of time.

After a review of the case records, the Court *En Banc* is constrained to agree with the assailed Decision reached by the First Division which dismissed the petition outright due to the First Division's patent lack of jurisdiction over the same in accordance with Section 4, Rule 42[1] of the Rules of Court in relation to Section 1, Rule 7[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

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1 RULE 42
PETITION FOR REVIEW FROM THE REGIONAL TRIAL COURTS
TO THE COURT OF APPEALS

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Sec. 4. *Action on the petition.* – The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, within ten (10) days from notice, or **dismiss the petition if it finds the same to be patently without merit**, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. (Emphasis and underscoring supplied)

2 RULE 7
PROCEDURE IN THE COURT OF TAX APPEALS

In the case at bar, it is undisputed that petitioner filed its protest to respondent's Final Letter of Demand (**FLD**) and Final Assessment Notice (**FAN**) on 22 July 2016 and manifested its submission of its supporting documents on 19 September 2016. Thereafter, petitioner received a Final Decision on Disputed Assessment (**FDDA**) signed by Officer-in-Charge Regional Director Atty. Jethro M. Sabariaga (**Sabariaga**) on 07 October 2016. However, instead of elevating its case before the Court, petitioner opted to file a request for reconsideration of the FDDA on 04 November 2016. Alleging inaction on its request for a period of 180 days from filing its administrative appeal with the Commissioner of Internal Revenue (**CIR**), petitioner filed an appeal *via* Petition for Review before the Court on 02 June 2017.

It is clear from the foregoing material events and dates alleged by petitioner that it failed to timely file its judicial protest before the Court. As correctly found by the Court's First Division, there is only one 180-day period under Section 228 of the National Internal Revenue Code (**NIRC**) of 1997 as amended, which is counted from the submission by the taxpayer of all its supporting documents, to wit:

> ...
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> **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: ...
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> ...
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer 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.

SEC. 1. *Applicability of the Rules of the Court of Appeals, exception.* – The procedure in the Court en banc or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules.

> **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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[3]
>
> ...

A careful perusal of the foregoing facts reveals that petitioner filed its request for reinvestigation of the Bureau of Internal Revenue's (**BIR**'s) assessment as early as 22 July 2016 and petitioner completed its submission of relevant documents on 19 September 2016. Considering the periods stated under Section 228 of the NIRC of 1997, as amended, Sabariaga had a period of 180 days from 19 September 2016 within which to rule on petitioner's claim otherwise, petitioner would have the option to elevate its case before this Court within thirty (30) days from the expiration of the 180-day period.

Since Sabariaga denied petitioner's protest on 07 October 2016, petitioner had 30 days therefrom to either file an appeal before this Court or to file an administrative appeal before respondent himself. Respondent resorted to the latter remedy which is found under Section 3.1.5 of Revenue Regulations (**RR**) No. 12-99[4], implementing Section 228 above, which provides:

> ...
>
> 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...
>
> ...
>
> 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**

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3 Emphasis supplied.

4 Implements 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.

decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise the assessment shall become final, executory and demandable.[5]

...

RR No. 12-99 was further amended by RR No. 18-13[6] to clarify on the remedies of the taxpayer, to wit:

...

3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

...

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by

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5 Emphasis supplied.

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

introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

...

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.

...

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.

If the protest or administrative appeal is not acted upon by the Commissioner within <u>one hundred eighty (180) days counted from the date of filing of the protest</u>, 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.

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.[7]

...

As can be gleaned from the foregoing, RR No. 18-13 did not amend RR No. 12-99 to such extent as to give the CIR a fresh period of 180 days to decide a taxpayer's administrative appeal anent

[7] Italics in the original text, emphasis and underscoring supplied.

petitioner's interpretation to the contrary. Rather, the 180-day period's reckoning date remains fixed at the time of the protest's perfection, which is either upon its filing in the case of a motion for reconsideration or submission of relevant documents in case of a motion for reinvestigation. Therefore, petitioner's construction of RR No. 18-13 is not only erroneous but the same also works to expand the limitations imposed by Section 228 of the NIRC of 1997, as amended, which fixes the reckoning point of the 180-day period from the "submission of documents".

Although petitioner was successful in filing an MR before the CIR, the 180-day period is still to be counted from its submission of the supporting documents on 19 September 2016 as this is the clear import of both the NIRC and the relevant implementing rules. Accordingly, the CIR had until 18 March 2017 or the balance left of the 180-day period to rule on petitioner's request. After the expiration of this period, petitioner had 30 days or until 17 April 2017 within which to file a Petition for Review before this Court. As aptly observed by the First Division, petitioner's original Petition for Review was obviously filed out of time when it did so only on 02 June 2017 or 44 days after the lapse of the 30-day period to file an appeal.

WHEREFORE, the foregoing considered, petitioner Nueva Ecija II Electric Cooperative, Inc. – Area 2's Compliance with the Court's 07 October 2020 Resolution is **NOTED.** Additionally, its Motion for Reconsideration filed on 15 April 2021 is **GRANTED** and the dismissal grounded on its lack of compliance with the 07 October 2020 Resolution is **SET ASIDE**. However, considering the clear absence of jurisdiction on the part the Court in Division over CTA Case No. 9605, the Petition for Review filed before the Court *En Banc* on 03 August 2020 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

x - x

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice