REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KUEHNE + NAGEL, INC.,
Petitioner,

CTA EB No. 2208
(CTA AC No. 206)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro, JJ.

- versus –

CITY OF PARAÑAQUE and ANTHONY I. PULMANO, in his capacity as the City Treasurer of Parañaque,
Respondents.

Promulgated:
SEP 09 2020 11:47am

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review[1] filed under Section 18, Republic Act (RA) No. 1125, as amended. It seeks the reversal of the Decision dated July 18, 2019,[2] (Assailed Decision) as well as the Resolution dated December 5, 2019[3] (Assailed Resolution) of the First Division (Court in Division)[4] of this Court in CTA AC No. 206 entitled *Kuehne + Nagel, Inc.*

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[1] Court *En Banc's* Docket, pp.8-21.
[2] *Id.*, pp. 27-36.
[3] *Id.*, pp. 38-41.
[4] Composed of Presiding Justice Roman G. Del Rosario as Chairperson, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Catherine T. Manahan as members.

v. City of Parañaque and Anthony I. Pulmano, in his capacity as the City Treasurer of Parañaque.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Orders dated January 29, 2018 and May 29, 2018 are hereby **AFFIRMED**.
>
> **SO ORDERED**."

Assailed Resolution:

> "**WHEREFORE**, premises considered, respondent's Motion to Admit/Opposition with Comment/Opposition attached is **ADMITTED**. Accordingly, petitioner's Motion for Reconsideration (Re: Decision dated July 18, 2019) is hereby **DENIED** for lack of merit. The assailed Decision dated July 18, 2019 is **AFFIRMED**.
>
> **SO ORDERED.**"

THE FACTS

As found by the Court in Division in its Decision dated July 18, 2019, the facts of the present case are as follows:[5]

> "Petitioner KNI is a domestic corporation existing under and by virtue of Philippine laws, with principal office address at 5th Floor Unit 501-H, 507-508-H, Harbor Drive, Five E-Com Center Pacific Drive Extension Mall of Asia Complex, Pasay City. It is engaged in the business of international freight and/or cargo consolidation and forwarding by means of air and sea transport. *gr*

[5] Court *En Banc's* Docket, pp. 27-29 (Citations omitted).

Respondent City of Parañaque is a local government unit while respondent Anthony I. Pulmano is the duly appointed City Treasurer of Parañaque City, who is empowered to perform the duties of said office, including *inter alia*, the collection of all local taxes, fees and charges, respectively.

On September 2, 2014, petitioner KNI received a Notice of Assessment dated September 1, 2014 from the respondent City Treasurer requiring the former to pay the amount of Php13,270,785.27, representing additional business tax, inclusive of surcharges and penalties, for CY 2009 to 2013.

On November 3, 2014 petitioner filed its protest on the said notice of assessment.

On March 30, 2015, petitioner filed a supplemental protest which was dismissed in a letter of denial from the respondents on May 15, 2015.

On June 15, 2015, petitioner filed a complaint before the RTC of Parañaque City-Branch 258 which was dismissed under the assailed Order dated January 29, 2018 for being filed beyond the prescribed period under Section 195 of Republic Act (RA) No. 7160, as amended, otherwise known as the Local Government Code (LGC) of 1991.

Petitioner then moved for the reconsideration of such dismissal but was again denied by the said court under the assailed Order dated May 29, 2018 for its failure to prove that said complaint was filed within the said prescriptive period. Said Order was received by the petitioner on June 7, 2018.

On July 9, 2018, petitioner filed the instant petition.

On July 20, 2018, this Court ordered the respondents to file their comment on the said petition which they filed on August 8, 2018 through registered mail and was received by this Court on August 15, 2018.

On September 4, 2018, this Court ordered the parties to submit their respective memoranda and the RTC-Parañaque City, Branch 258, to elevate the records of the instant case.

Petitioner submitted its Memorandum on October 1, 2018 while the respondents submitted their Memorandum on October 23, 2018 through registered mail. After receipt of the last Memorandum on November 8, 2018, the Court deemed the case submitted for decision."

On July 18, 2019, the Court in Division rendered the Assailed Decision denying petitioner's Petition for Review.

Aggrieved, petitioner filed a Motion for Reconsideration on August 8, 2019 which the Court in Division denied in the Assailed Resolution.

On January 13, 2020, petitioner filed the present Petition for Review via registered mail.

On March 6, 2020, respondents filed via registered mail their Comment/Opposition (To the Petition for Review).[6]

In a Resolution dated June 25, 2020,[7] the Court *En Banc* gave due course to the present Petition for Review. In the same Resolution, the present case was submitted for decision.

THE ISSUES

Petitioner filed the present Petition for Review of the basis of the following grounds: [8]

> "10.1. Petitioner timely filed its judicial protest within the period prescribed under Section 195 of the Local Government Code (LGC); and
>
> 10.2. The assessment is void for being issued without authority and in violation of the LGC."

THE COURT *EN BANC*'S RULING

Prescription

In its Petition for Review, petitioner essentially claims that its judicial protest was timely filed with the Regional Trial Court (RTC) as the 30-day period to file a complaint in a court of competent jurisdiction under Section 195 of the Local Government Code (LGC) should be counted from petitioner's receipt of respondent Pulmano's Reply Letter on May 15, 2015.[9] Petitioner also maintains that it validly considered the Reply Letter as

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[6] *Id.*, pp. 53-67.
[7] *Id.*, pp. 104-105.
[8] *Id.*, p. 12.
[9] *Id.*, pp. 12-16.

respondent Pulmano's decision that is appealable to the RTC because such Reply Letter sufficiently disposes of petitioner's protest.[10]

Petitioner likewise asserts that the Supreme Court's ruling in the case of *China Banking Corporation v. City Treasurer of Manila*[11] has no relevance to the present case.[12] Petitioner posits that the Supreme Court in *China Banking* did not specifically rule that a taxpayer cannot appeal from a denial received beyond the 60-day period within which the local treasurer shall decide on a protest.[13]

Petitioner also avers that the wording of Section 195 of LGC cannot be interpreted to require taxpayers to appeal the inaction of the local treasurer. According to petitioner, there is nothing in the law that bars it from appealing respondent's decision despite being issued after the lapse of the 60-day period.[14]

In its Petition for Review, petitioner also argues that the assessment is void for being issued without authority and in violation of Section 133(j) of the LGC.[15] Specifically, petitioner claims that the City of Parañaque has no power to impose local business tax on freight forwarders.[16]

In their Comment/Opposition, respondents assert that petitioner cannot, without violating the principle of due process, raise the issue of the validity of the assessment and that petitioner no longer has any cause of action as the assessment subject of the present case is already final and conclusive.

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review should be denied for lack of merit. There is no substantial matter much less compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution.

Central to the resolution of the present controversy is the proper reading and application of Section 195 of the LGC. This provision lays down the remedies available to taxpayers against local tax assessments, to wit:

> SECTION 195. ***Protest of Assessment.*** — When the local treasurer or his duly authorized representative finds that

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[10] *Id.*
[11] G.R. No. 204117, July 1, 2015, 761 SCRA 238 ("*China Banking*").
[12] Court *En Banc's* Docket, pp. 12-16.
[13] *Id.*
[14] *Id.*
[15] *Id.*, pp. 16-18.
[16] *Id.*

> correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. **The local treasurer shall decide the protest within sixty (60) days from the time of its filing.** If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.** *(Emphasis supplied)*

Pursuant to the foregoing provision, the taxpayer is given the right to file a written protest against the local tax assessment issued by the local treasurer within a period of sixty (60) days from its receipt of the notice of assessment. After the taxpayer has seasonably filed a written protest, the local treasurer is mandated to act on and decide the protest within a period of sixty (60) days from the date of filing thereof. Within this period, the local treasurer may wholly or partially grant the taxpayer's protest, or it may wholly or partially deny the same, depending on its evaluation of the merits thereof. In cases where the local treasurer decides on the protest *within the prescribed period*, the taxpayer is allowed to institute a judicial protest before a court of competent jurisdiction within a period of thirty (30) days from its receipt of the local treasurer's decision.

In the event, however, that the local treasurer fails to act on the protest *within the prescribed period*, the above provision likewise allows the taxpayer the same remedy of instituting a judicial protest before a court of competent jurisdiction within a period of thirty (30) days counted from the lapse of the 60-day period within which the local treasurer should decide. In such cases, the inaction of the local treasurer on the taxpayer's protest after the 60-day period becomes, by express provision of law, a "denial due to inaction" of the taxpayer's protest.

It is important to note that the remedies under the above provision are mandatory given that failure to strictly abide by the same renders the assessment conclusive and unappealable.

In light of the foregoing discussion, the Court *En Banc* agrees with the Court in Division that the filing of petitioner's judicial protest before the RTC was beyond the period prescribed under Section 195 of the LGC.

The records show that on September 2, 2014, petitioner received the Notice of Assessment issued by respondent Pulmano. On November 3, 2014, petitioner filed its written protest against the said assessment. Counting sixty (60) days from such date, respondent Pulmano had until January 2, 2015 within which to decide petitioner's protest. Respondent Pulmano, however, failed to act on the same within the above period. Consequently, respondent Pulmano's inaction became a "denial due to inaction" after January 2, 2015 by operation of law.

Counting thirty (30) days from January 2, 2015, petitioner had until February 2, 2015 within which to institute its judicial protest before a court of competent jurisdiction. In the present case, however, petitioner filed its complaint before RTC of Parañaque City – Branch 258 only on June 15, 2015. Obviously, petitioner's judicial protest was filed out of time.

Petitioner, however, insists that the 30-day period within which to file its judicial protest should be counted from its receipt of respondent Pulmano's Reply Letter on May 15, 2015.[17] Petitioner posits that such Reply Letter constitutes as the final decision on its written protest against the assessment.[18] Moreover, petitioner postulates that the wording of Section 195 of the LGC cannot be interpreted to require taxpayers to appeal the inaction of the local treasurer.[19] According to petitioner, Section 195 of the LGC does not mandate the exercise of one remedy over the other and that there is nothing in the law that bars it from appealing respondent Pulmano's decision despite being issued after the lapse of the 60-day period.[20]

A plain reading of Section 195 of the LGC readily reveals that petitioner's position is not well-taken.

Contrary to petitioner's assertions, Section 195 clearly mandates the local treasurer to decide the protest within sixty (60) days from the filing thereof. In case the local treasurer fails to decide within such period, the taxpayer shall have thirty (30) days from the lapse of the said 60-day period within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable. It is thus fairly evident that the taxpayer is required to appeal the inaction of the local treasurer.

[17] *Id.*, p. 12.
[18] *Id.*, pp. 12-13.
[19] *Id.*, pp. 15-16.
[20] *Id.*, p. 16.

The law is clear on this matter. Following the *verba legis* doctrine, there is, therefore, no room for interpretation. As aptly held by the Supreme Court in *Commissioner of Internal Revenue v. Ariete*,[21] to wit:

> "It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication."

Notably, the above reading of Section 195 of the LGC is consistent with the Supreme Court's ruling in *China Banking* when it held that:

> "The Court, however, is of the view that <u>the period within which the City Treasurer must act on the protest, and the consequent period to appeal a 'denial due to inaction,' should be reckoned from January 15, 2007, the date CBC filed its protest, and not March 27, 2007. Consequently, the Court finds that the CTA *En Banc* did not err in ruling that CBC had lost its right to challenge the City Treasurer's 'denial due to inaction.'</u> On this matter, Section 195 of the LGC is clear:
>
> > SECTION 195. Protest of Assessment. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which**

[21] G.R. No. 164152, January 21, 2010, 610 SCRA 472.

to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

[Emphasis Supplied]

Time and again, it has been held that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, the Court declares that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law." *(Underscoring supplied)*

In *Team Pacific Corporation v. Daza*,[22] the Supreme Court also gave a similar application of Section 195 of the LGC as follows:

"**A taxpayer dissatisfied with a local treasurer's denial of or inaction on his protest over an assessment has thirty (30) days within which to appeal to the court of competent jurisdiction. Under the law, said period is to be reckoned from the taxpayer's receipt of the denial of his protest or the lapse of the sixty (60)-day period within which the local treasurer is required to decide the protest, from the moment of its filing.** This much is clear from Section 195 of the *Local Government Code* which provides as follows:

SECTION 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly

[22] G.R. No. 167732, July 11, 2012, 676 SCRA 82, 89-90 ("*Team Pacific*").

> meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

> **Absent any showing of the formal denial of the protest by Atty. Miranda, then Chief of the Taguig Business Permit and Licensing Office, we find that TPC's filing of its petition before the RTC on 19 April 2004 still timely. Reckoned from the filing of the letter protest on 19 January 2004, Daza had sixty (60) days or until 19 March 2004 within which to resolve the same in view of the fact that 2004 was a leap year. From the lapse of said period, TPC, in turn, had thirty (30) days or until 18 March 2004 within which to file its appeal to the RTC. Since the latter date fell on a Sunday, the RTC correctly ruled that TPC's filing of its petition on 19 April 2004 was still within the period prescribed under the above quoted provision.**" *(Emphasis supplied)*

To reiterate, the inaction of the local treasurer within the 60-day period is tantamount to a "denial due to inaction" by operation of law. It is the law itself which provides for the consequence of the inaction of the local treasurer over the taxpayer's protest within the given period. Such "denial due to inaction" grants the taxpayer the privilege to appeal the same with a court of competent jurisdiction within the 30-day period from the lapse of the 60-day period within which the local treasurer should decide. The taxpayer would lose its statutory privilege to challenge the local treasurer's "denial due to inaction" should he fail to appeal within the prescribed period.

The Court *En Banc* likewise agrees with the Court in Division when it held that respondent Pulmano's Reply Letter was already moot and academic considering that there was already a "denial due to inaction" after the lapse of the 60-day period for the local treasurer to act on petitioner's protest.[23] To rule otherwise would unduly allow the local treasurer to circumvent or even negate the consequence which the law itself imposes as brought about by his own nonfeasance. To give effect to the belated decision of the local treasurer after the lapse of the 60-day period within which to decide would be an unwarranted deviation from the definite procedure dictated by Section 195 of the LGC.

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[23] Court *En Banc*'s Docket, pp. 39-40.

In its Petition for Review, the petitioner alleges the following:[24]

"26. To rule in a restrictive way is to read upon the law what is not provided therein. *Verba legis non est recedendum.* From the words of the statute there should be no departure. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. Since the law does not limit the option of the taxpayer to appeal either the inaction or the decision of the city treasurer, then the interpretation of the law should not be restrictive of the rights of the taxpayer to pursue either course of action, even if the decision is rendered after the lapse of the 60-day prescribed period.

27. Further, the CTA-Division does not have basis to prohibit the exercise of a remedy just because '[t]here is no provision in Section 195 of the LGC that allows taxpayers to wait for the belated decision of the concerned official of the local government unit.' In the landmark ruling of the Supreme Court in Lascona Land Co., Inc. v. Commissioner of Internal Revenue, the Court allowed the taxpayer to wait for a belated decision. In ruling as such, it explained how to read remedial provisions such as Section 228, Tax Code:

> Therefore, as in Section 228, **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, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. xxx

28. Similar to an assessment for national internal revenue taxes, when the taxpayer protests an LBT assessment, the taxpayer naturally expects the city treasurer to decide either positively or negatively. Thus, the same taxpayer should not be prejudiced for choosing to wait for the final decision of the city treasurer, especially if it has reasonable grounds to expect a favorable outcome on the protest. The institution of the prescribed period for the city treasurer to act on a protest contemplates a scenario where the city treasurer will decide on such claim.

29. Based on the foregoing, it is clear that the law and jurisprudence do not require that taxpayers, such as Petitioner, immediately appeal the inaction of the treasurer. Simply put, the aggrieved taxpayer may appeal either the treasurer's inaction or decision. In this case, Petitioner chose to appeal the latter." *(Citations omitted)*

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[24] *Id.*, pp. 15-16.

Petitioner's argument is flawed.

The case of *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[25] as cited by petitioner in its Petition for Review cannot be applied even by way of analogy to the present case. The factual milieu as well as the laws, rules and jurisprudence involved in that case are fundamentally different from those involved in the present case. It may be recalled that in *Lascona*, the Supreme Court ruled that in case of inaction of the Commissioner of Internal Revenue (CIR) on the protested assessment, the taxpayer has the option of either filing a Petition for Review before the Court of Tax Appeals (CTA) within 30 days after the expiration of the 180-day period or await the final decision of the CIR on the disputed assessment and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision. In the said case, the Supreme Court construed the wording of Section 228 of the National Internal Revenue Code of 1997, as amended, in relation to Section 3(A)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) and the rulings in the cases of *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[26] and *Commissioner of Internal Revenue v. Villa.*[27] Note that Section 3(A)(2), Rule 4 of RRCTA explicitly allows the taxpayer to await the final decision of the CIR on the disputed assessment beyond the 180-day period. In contrast, there is nothing in Section 195 of the LGC that allows taxpayers to wait for the decision of the local treasurer after the lapse of the 60-day period as provided therein. In fact, Section 195 of the LGC is categorical in stating that the assessment becomes conclusive and unappealable if the taxpayer fails to appeal with the court of competent jurisdiction within 30 days after the lapse of the 60-day period given to the local treasurer. As discussed above, *China Banking* and *Team Pacific* both serve as authority in holding that the inaction of the local treasurer becomes a "denial due to inaction" after the lapse of the 60-day period and, as such, must be timely appealed to a court of competent jurisdiction.

Validity of the Assessment

Petitioner likewise argues that the assessment issued by respondent Pulmano against petitioner should be cancelled because the same is *void ab initio* for being issued without authority and in flagrant violation of Section 133(j) of the LGC.[28] To buttress its position, it cited the 2018 CTA case of *Kuehne + Nagel, Inc. v. City of Parañaque*[29] as well as the Supreme Court case of *City of Pasig v. Manila Electric Co.*,[30] among others, as legal basis. *ge*

[25] G.R. No. 171251, March 5, 2012, 667 SCRA 464 ("*Lascona*").
[26] G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[27] G.R. No. L-23988, January 2, 1968, 130 Phil. 3 (1968).
[28] Court *En Banc*'s Docket, p. 16.
[29] CTA AC Case No. 189, November 15, 2018; Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy, concurring.
[30] G.R. No. 181710, March 7, 2018.

The Court *En Banc* is not persuaded.

It must be noted that this particular issue is being raised for the first time in the present Petition for Review. It was never raised at all before the RTC as well as before the Court in Division. It is a settled rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal because to allow the same would be offensive to the basic rules of fair play, justice and due process.[31]

At any rate, considering the finding that petitioner's judicial protest was filed out of time, petitioner cannot anymore raise any question concerning the validity or correctness of the assessment as the sole avenue to assert the same has been effectively shut.

In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*,[32] the Supreme Court held that "[t]o be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal."

A similar pronouncement was likewise declared by the Supreme Court in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[33] to wit:

> "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 became 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.**" *(Emphasis supplied and citations omitted)*

[31] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, (Resolution)* G.R. No. 168498, April 24, 2007, 522 SCRA 144; *Hubert Nuñez vs. SLTEAS Phoenix Solutions, Inc.*, G.R. No. 180542, April 12, 2010, 618 SCRA 134; *American Home Insurance Co. of New York vs. F. F. Cruz & Co., Inc.*, G.R. No. 174926, August 10, 2011, 655 SCRA 248; *Padilla Mercado et. al. vs. Sps. Espina*, G.R. No. 173987, February 25, 2013, 691 SCRA 545; *Ma. Consolacion M. Nahas vs. Juanita L. Olarte*, G.R. No. 169247, June 2, 2014, 724 SCRA 224; *Luzviminda Apran Canlas vs. Republic of the Philippines*, G.R. No. 200894, November 10, 2014; *Cheryll Santos Leus vs. St. Scholastica's College Westgrove and/or Sr. Edna Quiambao, OSB*, G.R. No. 187226, January 28, 2015, 378 SCRA 394.
[32] G.R. No. 169225, November 17, 2010, 635 SCRA 170.
[33] G.R. No. 134062, April 17, 2007, 521 SCRA 386.

The same conclusion was likewise arrived at by the Supreme Court in *Herarc Realty Corporation v. The Provincial Treasurer of Batangas, et. al.,*[34] viz:

> "Under Section 7(a)(3) of Republic Act (R.A.) No. 9282, the appellate jurisdiction of the CTA over decisions, orders, or resolutions of the RTC becomes operative when the latter has ruled on a local tax case, *i.e.,* one which is in the nature of a tax case or which primarily involves a tax issue. Local tax cases include those involving RPT, which is governed by Book II, Title II of R.A No. 7160, or *Local Government Code (LGC)* of 1991. Among the possible issues are the legality or validity of the RPT assessment; protests of assessments; disputed assessments, surcharges, or penalties; legality or validity of a tax ordinance; claims for tax refund/credit; claims for tax exemption; actions to collect the tax due; and even prescription of assessments.
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> Evidently, petitioner erred in its appeal. **If the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due with respect to the property becomes absolute upon the expiration of the period to appeal. The assessment becomes final, executory and demandable, precluding the taxpayer from assailing the legality/validity (or reasonableness/correctness) of the assessment.**" *(Emphasis supplied and citations omitted)*

While it is true that a void assessment bears no fruit,[35] it is equally and undeniably true that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.[36] The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[37] Before this Court could validly make any finding as regards the validity or correctness of the assessment, it must first be established that the appeal was duly perfected and that this Court validly acquired jurisdiction over the case. The cart cannot be placed before the horse. Given that petitioner's judicial protest is already time-barred, the RTC, much less this Court, never acquired jurisdiction over the present case. Having no jurisdiction over the present case, this Court cannot perform any action therefor except to dismiss the same.[38]

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[34] G.R. No. 210736, September 5, 2018.
[35] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010, 637 SCRA 647; *Commissioner of Internal Revenue v. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 396.
[36] *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation,* G.R. No. 167606, August 11, 2010, 628 SCRA 105; *China Banking Corporation v. City Treasurer of Manila,* G.R. No. 204117, July 1, 2015, 761 SCRA 238, 251; *Neypes v. Court of Appeals,* G.R. No. 141524, September 14, 2005, 469 SCRA 641.
[37] *Id.*
[38] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs,* G.R. No. 209830, June 17, 2015, 759 SCRA 313; *Katon v. Palanca, Jr.,* G.R. No. 151149, September 7, 2004, 481 Phil. 168.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in 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