REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

KRONNE STEEL CORPORATION, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 9955

Members:

DEL ROSARIO, *P.J., Chairperson,* *and*
MANAHAN, *JJ.*

Promulgated:
JUL 02 2021 9:16am

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RESOLUTION

For resolution is respondent's **Motion to Dismiss** filed on March 10, 2021, without petitioner's comment despite notice per Records Verification dated June 22, 2021.

Respondent moves for the dismissal of the present case on the ground that the Court has no jurisdiction over the case. He alleges that petitioner failed to timely file a valid Petition for Review with the Court. Respondent avers that while petitioner in its Petition for Review alleged that its authorized representative, Ms. Ria A. Sablon, received the Final Decision of respondent on September 20, 2018, its witness, Ms. Carmelita M. Galita, testified in her Judicial Affidavit that the Final Decision was received on September 18, 2018. Thus, respondent contends that when petitioner filed its Petition for Review on October 19, 2018, it was filed beyond the mandatory thirty (30)-day period provided for in Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA).

Considering that respondent's Motion to Dismiss was filed after petitioner has rested its case and that the ground for dismissal was based on the evidence presented by petitioner, the Court shall treat respondent's motion as a demurrer to evidence.

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests his case. It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case.[1]

Demurrer to evidence is governed by Section 1, Rule 33 of the 2019 Amendments to the Rules of Civil Procedure, which reads:

> "Section 1. Demurrer to evidence. — After the plaintiff has completed the presentation of his or her evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his or her motion is denied, he or she shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed, he or she shall be deemed to have waived the right to present evidence."

In *Republic of the Philippines vs. Fe Roa Gimenez and Ignacio B. Gimenez*,[2] the Supreme Court laid down the guidelines in resolving a demurrer to evidence, to wit:

> "This court has laid down the guidelines in resolving a demurrer to evidence:
>
> > A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiffs evidence together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is prima facie insufficient for a recovery.
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> Furthermore, this court already clarified what the trial court determines when acting on a motion to dismiss based on demurrer to evidence:

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[1] *Nenita Gonzales, et al. vs. Mariano Bugaay, et al.*, G.R. No. 173008, February 22, 2012, *citing Celino vs. Heirs of Alejo and Teresa Santiago*, G.R. No. 161817, July 30, 2004.

[2] G.R. No. 174673, January 11, 2016.

> What should be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief based on the facts and the law. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, excluding technical aspects such as capacity to sue. . ."

The Court shall now proceed to resolve respondent's demurrer to evidence.

The present case is a Petition for Review filed by petitioner against respondent Commissioner of Internal Revenue (CIR) on October 19, 2018, praying that judgment be rendered reversing and setting aside the Final Decision of respondent dated September 11, 2018, ordering petitioner to pay the alleged deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax assessments, and Compromise Penalties for taxable year 2010, in the aggregate amount of ₱1,169,915.19.

As afore-discussed, respondent alleges that the Petition for Review was belatedly filed, and thus, the Court of Tax Appeals (CTA) has no jurisdiction over the present petition.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the procedure and manner upon which a taxpayer may protest an assessment, *viz.*:

> "SECTION 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 pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> 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.**" *(Boldfacing supplied.)*

Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, implements Section 228 of the NIRC of 1997, as amended. Section 3.1.4 thereof provides:

"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.

xxx xxx xxx

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 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 for 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.

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.

xxx" *(Boldfacing supplied)*

Additionally, Section 11 of Republic Act (RA) No. 1125,[3] as amended, and Section 3(a), Rule 8 of the RRCTA,[4] provide that a party adversely affected by the decision or ruling of the CIR may appeal to the CTA by filing a petition for review within thirty (30) days after the receipt of such decision or ruling.

Indubitably, if the CIR wholly or partially denies the protest, the taxpayer may either appeal to the CTA within thirty (30) days from receipt of the whole or partial denial of the protest.

In the present case, petitioner alleged in its Petition for Review that it received the Final Decision dated September 11, 2018 on September 20, 2018.[5] This allegation, however, is belied by evidence on record.

Parenthetically, petitioner's own witness, Ms. Carmelita M. Galita, testified in her Judicial Affidavit that petitioner received a copy of the Final Decision dated September 11, 2018 on September 18, 2018, to wit:

"**39.** **Q:** then what happened?

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[3] SEC. 11, Who may appeal; Mode of Appeal; Effect of Appeal. -Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. xxx

[4] SEC. 3. Who may appeal; period to file petition. –
(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes.

[5] Par. 12, Statement of Facts and Antecedent Proceedings, Petition for Review, CTA Docket, p. 16.

> **A:** After the lapse of many years, **on September 18, 2018, petitioner's other authorized representative, Ria A. Sablon, received a copy of the *Final Decision* of the respondent CIR dated September 11, 2018** relative to petitioner's protests to the assessment and collection of its alleged tax deficiencies."[6] (*Boldfacing supplied*)

When she was cross-examined, Ms. Galita confirmed that Exhibit "P-27",[7] which pertains to the CIR's Final Decision dated September 11, 2018, was received on September 18, 2018, to wit:

> "ATTY. MEDINA
>
> Q Now Madame Witness, when did you receive, **may I confirm Madame Witness if you indeed receive Exhibit "P-27" on September 18, 2018?** That is related to Questions No. 39, 40 & 41 Madame Witness.
>
> MS. GALITA
>
> A **Yes.**
>
> ATTY. MEDINA
>
> Q **So you confirm Madame Witness that Exhibit "P-2[7]" was received on September 18, 2018?**
>
> MS. GALITA
>
> A **Yes.**"[8] (*Boldfacing supplied*)

Based on the evidence presented by petitioner, it received the CIR's Final Decision dated September 11, 2018 on September 18, 2018. Counting thirty (30) days therefrom, petitioner had until October 18, 2018 within which to file its Petition for Review with the CTA. Thus, petitioner belatedly filed its Petition for Review on October 19, 2018.[9]

Since the present Petition for Review was filed beyond the thirty (30)-day reglementary period to appeal, the CTA is without jurisdiction to take cognizance of the case. Thus, the Court cannot decide the case on the merits[10] as the only power left with it is to dismiss the case.

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[6] Exhibit "P-28", CTA Docket, p. 195.
[7] CTA Docket, pp. 391-394.
[8] TSN dated November 5, 2019, p. 9.
[9] CTA Docket, p. 12.
[10] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

It is well-settled that perfection of 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. 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.[11] The thirty (30)-day period within which to file an appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction.[12].

WHEREFORE, premises considered, respondent's **Motion to Dismiss** is hereby **GRANTED**. Accordingly, the present Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

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[11] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.

[12] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006.