REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PERA MULTI-PURPOSE COOPERATIVE (PERA MPC), *Petitioner,*	**CTA Case No. 11026** Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 0 3 2023 3:00 p.m.

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RESOLUTION

Records show that the present Petition for Review seeks to dispute the assessment with an aggregate amount of ₱12,050,576.96 representing alleged deficiency internal revenue taxes for taxable year 2018.

The Petition for Review states the following material allegations, to wit:[1]

7. On 20 September 2021, a Formal Letter of Demand ('FLD'/Final Assessment Notice ('**FAN**') was issued by the Bureau of Internal Revenue ('**BIR**'), assessing Petitioner for deficiency DST, EWT, WTC and Additional Penalties in the total aggregate amount of **PhP12,050,576.96**, inclusive of increments;

8. On 29 October 2021, Petitioner PERA MPC filed a written protest to the FLD/FAN dated 27 October 2021 in the nature of a Request for Reinvestigation of the assessed internal revenue tax liabilities for the calendar year 2018;

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[1] Petition for Review, pp. 4-5.

9. On 18 January 2022, Petitioner PERA MPC received a Letter-Response from the BIR Revenue District Office ('**RDO**') No. 104 stating that the BIR is upholding their audit findings embodied in the FLD/FAN;

10. On 10 February 2022, a Final Decision on Disputed Assessment ('**FDDA**') signed by the Revenue Region No. 17 Regional Director, Mr. Jose Eric C. Furia, was issued, and subsequently received by Petitioner PERA MPC on 24 February 2022. The FDDA sustained the assessed deficiency internal revenue taxes in the aggregate amount of **PhP12,050,576.96**, inclusive of increments and penalties, and directed the Petitioner to immediately pay the same;

11. The FDDA being signed only by the Regional Director and in his name, Petitioner PERA MPC filed a protest thereto on 23 March 2022 by way of a Motion for Reconsideration before the Office of the Regional Director to contest the tax assessments made, as provided for under *Subsection 3.1.5 of Revenue Regulations ('**RR**') No. 12-99, as amended*;

12. On 31 March 2022, the Regional Director issued a Letter-Response to the Motion for Reconsideration filed by Petitioner PERA MPC. The Letter-Response did not act upon the Motion, but referred Petitioner to the filing of a request for reinvestigation with the Office of the Respondent CIR or a judicial protest with the Honorable Court of Tax Appeals;

13. On 25 April 2022, Petitioner PERA MPC timely filed a Motion for Reconsideration dated 18 April 2022 with the Office of Respondent CIR;

14. Respondent CIR ***has not, however, acted on*** the *Motion for Reconsideration* until the 180-day period lapsed on 22 October 2022, thereby giving Petitioner thirty (30) days to appeal the disputed assessment before this Honorable Court, in accordance with the last paragraph of Section 228 of the NIRC of 1997, as amended by Republic Act No. 10963, which states:

> 'SEC. 228. Protesting of Assessment. –
>
> xxx xxx xxx
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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, or **from the lapse of one**

hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.'

(Emphasis ours)

15. In view of the foregoing, Petitioner PERA MPC has thirty (30) days, or until 21 November 2022, within which to file a Petition for Review contesting the assessment following the inaction of Respondent CIR after the lapse of 180 days from his receipt of the Motion for Reconsideration;

16. Hence, the instant Petition for Review is timely filed;

After careful evaluation of the allegations in the present Petition for Review, this Court finds that the same must be dismissed for lack of jurisdiction.

Basic is the rule that jurisdiction of a court may be questioned at any stage of the proceedings.[2] Moreover, it is the duty of the courts to consider the question of jurisdiction before they look into other matters involved in the case, even though such question is not raised by any of the parties.[3] Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.[4] The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[5] If the court has no jurisdiction over the nature of an action, it has no other option but to dismiss the case.

It is also a settled rule that jurisdiction over the nature of an action is determined by the averments of the complaint or other initiatory pleading, not by the defenses contained in the answer.[6]

In *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*,[7] the Supreme Court enumerated the **only** three (3) options available to the taxpayer as provided under Section 3.1.5 of Revenue Regulations No. 12-99, as

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[2] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016, 781 SCRA 371; *Republic v. Bantigue Point Development Corporation*, G.R. No. 162322, March 14, 2012, 668 SCRA 163, 164.

[3] *Bureau of Customs v. Devanadera*, G.R. No. 193253, September 8, 2015, 770 SCRA 24.

[4] Section 1, Rule 9 of the Rules of Court; *Heirs of Jose Fernando v. De Belen*, G.R. No. 186366, July 3, 2013, 700 SCRA 562; *Geonzon Vda. De Barrera v. Heirs of Vicente Legaspi*, G.R. No. 174346, September 12, 2008, 565 SCRA 192, 198.

[5] *Bernardo v. Heirs of Eusebio Villegas*, G.R. No. 183357, March 15, 2010, 615 SCRA 474-475; *Sales v. Barro*, G.R. No. 171678, December 10, 2008, 573 SCRA 464.

[6] *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation*, G.R. No. 161589, November 24, 2014, 741 SCRA 440.

[7] G.R. No. 208731, January 27, 2016.

amended, which in turn implements Section 228 of the National Internal Revenue Code of 1997, as amended, to wit:

> "A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
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> 1. If the protest is wholly or partially denied by the CIR ***or*** his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.
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> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
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> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
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> To further clarify the three options: A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative."

In the present case, upon receipt of the FDDA issued by the Regional Director of BIR Revenue Region No. 7 on **February 24, 2022**, petitioner can avail of either the 1st or 2nd option indicated above, *i.e.*, either to file its appeal to this Court within 30 days from receipt of such FDDA, or to file its appeal before the Commissioner of Internal Revenue (CIR) likewise within the same 30-day period. Counting thirty (30) days from February 24, 2022, petitioner can validly avail of the 2 options until **March 26, 2022**. Instead of availing any of the 2 options above, however, petitioner opted to file a motion for reconsideration before the Regional Director on **March 23, 2022**. Such a remedy is not provided for by law and, therefore, did not interrupt the running of the 30-day period prescribed above. It was only on **April 25, 2022** when petitioner filed its appeal before the CIR. Such an appeal is, quite evidently, already late by **29 days.** By reason thereof, the deficiency assessments already became final, executory, and demandable.

Even assuming that the petitioner validly filed its appeal before the CIR, the present Petition for Review must still fail.

If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option is to wait for the CIR's decision before elevating its case to this Court. **The CIR is not given a fresh or separate one hundred eighty (180)-day period within which to decide the administrative appeal.** Given that the CIR has not yet acted on the petitioner's appeal, the filing of the present Petition for Review on November 10, 2022 is still premature.

Perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.[8] 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.[9]

WHEREFORE, the present Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[8] *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.
[9] *Id.*