REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

M. TECH PRODUCTS PHILIPPINES, INC.,
Petitioner,

CTA EB No. 2114
(CTA Case No. 9331)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 21 2020 4:10 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before this Court is a Petition for Review filed by petitioner M. Tech Products, Philippines, Inc. ("Petitioner", for brevity) on August 6, 2019, assailing the Decision[1] and Resolution[2] promulgated on December 11, 2018 and on July 9, 2019, respectively, by the CTA Special First Division (CTA Division) in the case *M. Tech Products Philippines, Inc. v. Commissioner of Internal Revenue,* docketed as CTA Case No. 9331.

[1] *Rollo*, pp. 25-53, Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and by Associate Justice Cielito N. Mindaro-Grulla.
[2] *Rollo*, pp. 55-61.

The dispositive portion of the December 11, 2018 Decision ("Assailed Decision") reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**

The dispositive portion of the July 9, 2019 Resolution ("Assailed Resolution") reads:

> **WHEREFORE**, premises considered, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE FACTS

The facts of this case as found by the then CTA Special First Division[3] are as follows:

> By virtue of the *Letter of Authority* (LOA) No. 050-2011-00000437 dated November 21, 2011, petitioner's books of accounts and accounting records were made the subject of examination by respondent for purposes of assessing all of petitioner's internal revenue taxes for taxable year 2010. The said LOA authorized Revenue Officer (RO) Felinor A. Pascua and Group Supervisor Ma. Susana Santos to examine petitioner's books of accounts and other accounting records for the period January 1, 2010 to December 31, 2010.
>
> A *Notice for Informal Conference* dated September 3, 2013 was sent to petitioner, informing petitioner that RO Felinor A. Pascua has submitted the report of investigation on petitioner's internal revenue tax liabilities from January 1, 2010 to December 31, 2010 and inviting petitioner to an informal conference.
>
> Respondent received the letter dated October 1, 2013 from the Managing Partner of Alas Oplas & Co. CPAs, Marycris S. Oplas, referring to the *Notice of Informal*

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[3] *Rollo*, pp. 26-34 ; Citations omitted.

Conference issued against petitioner and stating therein the position of petitioner on the proposed assessment.

On December 1, 2014, petitioner's Office Manager, Maria Theresa Tan-Dy, received the *Preliminary Assessment Notice* (PAN) Part I and II dated December 1, 2014, stating that respondent found petitioner liable for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, and final withholding of value-added tax, and compromise penalty for taxable year 2010.

In the *Details of Discrepancies* attached to the PAN, respondent further indicated that petitioner's authorized representative executed a waiver of the defense of prescription under the statute of limitations provided in Sections 203 and 222 of the National Internal Revenue Code (NIRC) of 1997 on December 20, 2013 and that the period to assess was suspended from the date of execution until December 31, 2014.

Subsequently, respondent issued the *Formal Assessment Notice* (FAN) Part I and II dated December 18, 2014, holding petitioner liable to pay the said deficiency taxes and penalty.

On April 10, 2015, respondent received the letter dated April 1, 2015 from Marycris S. Oplas of Alas Oplas & Co. CPAs, alleging that the assessment against petitioner must be cancelled for having been issued beyond the three (3)-year prescriptive period, invoking the invalidity of the waiver of the statute of limitation.

Thereafter, in the letter dated May 15, 2015, the Bureau of Internal Revenue (BIR), invoking Revenue Regulations (RR) No. 18-2013, stated that the assessment has become final and executory and that the assessment has already been forwarded to the Collection Division of the BIR.

On October 13, 2015, petitioner authorized Maria Theresa Tan-Dy, petitioner's Office Manager, to file any and all appropriate pleadings/letters to challenge respondent's assessment. Also, petitioner engaged the legal services of Rovero Tamayo & Partners Law Office as counsel to represent petitioner in the said case based on the Secretary's Certificate executed on October 14, 2015. Petitioner, through the above law office, filed before the Collection Division of the BIR on

October 16, 2015, the letter of even date, requesting to hold in abeyance the issuance of the order of seizure and to revert the docket to the Assessment Division of the BIR.

The letter dated February 18, 2016 from the Chief of Collection Division of the BIR was sent to petitioner, stating that the FAN dated December 18, 2014 was served and received on the same day by petitioner's representative, Jamie Ordoveza, at the taxpayer's given address.

Petitioner filed its reply to the said letter dated February 18, 2016 on March 4, 2016, reiterating the arguments raised in its letter filed on October 16, 2015. In response, respondent sent the letter dated March 10, 2016 to petitioner, stating that petitioner is already precluded from disputing the correctness of the assessment because of the late filing of the protest on October 16, 2015.

Hence, petitioner filed the instant *Petition for Review with Motion to Suspend Collection of Taxes* on April 14, 2016.

After service of Summons upon respondent on April 22, 2016, petitioner's Motion to Suspend Collection of Taxes embodied in the instant Petition for Review was set for hearing on May 4, 2016, but the hearing was reset to June 1, 2016 due to some discrepancies in the Judicial Affidavit of petitioner's witness, Maria Theresa A. Tan-Dy.

During the hearing held on June 1, 2016, Maria Theresa A. Tan-Dy completed her testimony in support of petitioner's Motion for Suspension of Collection of Taxes. However, in view of the doctrine in the case of *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao vs. The Court of Tax Appeals — First Division, et al.*, the Court directed both counsels to file a Manifestation whether there is a need to conduct further hearing with respect to the issues raised in the instant Petition for Review within ten (10) days from June 1, 2016. Thus the Court set a tentative hearing on June 22, 2016 for the continuation of the presentation of petitioner's evidence.

Meanwhile, respondent filed his *Answer* on June 6, 2016, interposing the following special and affirmative defenses:

xxx xxx xxx

4. Based on the records of the case, it is worth noting that petitioner received the Formal Assessment Notice (FAN) involving the assessed deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, final withholding tax on VAT and compromise penalty for taxable year 2010 on December 18, 2014 (paragraph 35 of the Petition for Review). Thereafter, petitioner filed a protest against the FAN on April 1, 2015 (paragraph 40 of the Petition for Review).

Considering the circumstances in the case at bar, it is clear that respondent failed to file a valid protest within the thirty (30)-day period, as required by Section 228 of the 1997 Tax Code. Consequently, the assessment became final executory and unappealable. Xxx xxx xxx

xxx xxx xxx

6. In fine, **petitioner only had until January 17, 2015 within which to file its protest against the FAN.** When the protest was filed by petitioner on April 1, 2015, it was clearly beyond the period allowed by law. Accordingly, the subject deficiency taxes for taxable year 2010 had already become final, executory, demandable and unappealable. Hence, the Honorable Court has no jurisdiction to take cognizance of the case.

xxx xxx xxx

PERIOD OF PRESCRIPTION

Petitioner was assessed by respondent for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, final withholding tax on VAT and compromise penalty for taxable year 2010 within the prescriptive period under Section 222(b) of the 1997 Tax Code, in view of the Waiver of the Defense of Prescription under the Statute of Limitations of the

National Internal Revenue Code duly executed by petitioner.

Moreover, the running of the three-year statute of limitation as provided under Section 203 of the NIRC is not applicable but rather the ten-year prescriptive period pursuant to Section 222(a) of the Tax Code which states that, 'In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission.'

xxx xxx xxx

On June 13, 2016, petitioner filed its "Manifestation with Motion for 1. Additional Time to Submit Judicial Affidavit of Witness; 2. For the Resetting of 22 June 2016 hearing to any day in July 2016" alleging that there is a need for a preliminary hearing to determine whether respondent has committed patent violation of laws.

On the other hand, respondent posted his *Comment/Opposition (To Petitioner's Motion for the Suspension of Collection of Taxes)* on June 7, 2016 which was received by this Court on June 17, 2016.

In the Resolution dated June 22, 2016, the Court granted petitioner's motion to reset the hearing on June 22, 2016 while awaiting respondent's filing of the required Manifestation. Hence, said hearing was reset to July 27, 2016.

On June 13, 2016, respondent posted his Manifestation/Compliance which was received by this Court on June 23, 2016, alleging that a further hearing be conducted and that respondent will be presenting his witness to prove that the subject deficiency tax assessments have already become final, executory and demandable for failure of petitioner to timely file a protest against the FAN.

Thus, in the Resolution July 1, 2016, the Court set a preliminary hearing on July 27, 2016 for further presentation of petitioner's evidence. On said date, petitioner's counsel recalled to the witness stand its witness Maria Theresa Tan-Dy. Subsequently, petitioner filed its Formal Offer of Evidence in relation to its Motion to Suspend Collection of Taxes.

In the Resolution dated September 14, 2016, the Court admitted Exhibits "P-1", "P-1-a", "P-4", "P-7", "P-7-a", "P-10", "P-13", "P-14", "P-15", "P-15-a", "P-17", "P-17-a", "P-17-b", "P-18", "P-19", "P-20", "P-21", "P-22", "P-22-a", "P-23", "P-24", and "P-24-a"; but denied the admission of Exhibits "P-2", "P-3", "P-5", "P-6", "P-6-a", "P-8", "P-9", "P-9-a", "P-9-b", "P-9-c", "P-9-d", "P-11", "P-12", "P-16", "P-21-a", "P-21-a-1", "P-21-b", and "P-21-b-1", for failure to present the original documents for comparison.

During the hearing held on September 14, 2016, respondent presented counter-evidence to petitioner's Motion to Suspend Collection of Taxes by way of the testimony of witness Felinor A. Pascua. Thereafter, respondent's counsel filed respondent's Formal Offer of Evidence on September 30, 2016 consisting of Exhibits "R-1" to "R-11-a", inclusive of submarkings. All the said Exhibits and their submarkings were I on *[sic]* admitted by the Court in the Resolution dated November 15, 2016.

In the Resolution dated January 4, 2017, the Court granted petitioner's *Motion to Suspend Collection of Taxes* subject to the posting of a cash bond or surety bond equivalent to the amount of P24,433,300.67 representing the principal amount of the assessed deficiency taxes.

After the pre-trial conference held on August 31, 2017, the parties submitted their *Joint Stipulation of Facts and Issues (JSFI)* on September 20, 2017 stating that the parties are adopting the exhibits presented and offered through their respective *Formal Offer of Evidence* dated July 29, 2016 and September 29, 2016; that petitioner is adopting the testimony of Maria Theresa A. Tan-Dy, while respondent as *[sic]* adopting the testimony of Revenue Officer Felinor A. Pascua. The same was approved by the Court in the Resolution dated September 28, 2017.

On the basis thereof, the Court issued the Pre-Trial Order dated November 3, 2017, noting the foregoing manifestations of the parties, through counsel, and gave both parties a period of thirty (30) days from receipt thereof to submit their respective *Memoranda.*

Respondent filed his *Memorandum* on December 1, 2017 while petitioner filed its *Memorandum for the Petitioner* on December 22, 2017. The Court considered the case submitted for decision on January 15, 2018.

On December 11, 2018, the CTA Division dismissed the Petition for Review for lack of jurisdiction.

On July 9, 2019, the CTA Division denied petitioner's Motion for Reconsideration for lack of merit.

On August 6, 2019, petitioner filed its Petition for Review before the CTA *En Banc*.

On September 2, 2019, this Court ordered respondent to file his Comment. On September 12, 2019, respondent filed his Comment.

On October 23, 2019, this case was submitted for decision.

ISSUE

Petitioner states in its **Arguments/Discussions** of the Petition that:

"THE HONORABLE COURT HAS JURISDICTION OVER THE CASE, THE PROTEST HAVING BEEN FILED ON TIME AND A VOID ASSESSMENT COULD BE CHALLENGED ANYTIME;

THE ALLEGED DEFICIENCY TAX ASSESSMENT AGAINST PETITIONER IS PRESCRIBED ALREADY THUS CANNOT RIPEN INTO A VALID ASSESSMENT;

THE EXECUTION OF THE WAIVER OF PRESCRIPTIVE PERIOD CONFIRMS THAT THE PERIOD OF LIMITATION IS ONLY THREE (3) YEARS AND THAT THE PETITIONER HAS TIMELY FILED ITS INCOME TAX RETURN AND SUCH OTHER PERTINENT TAX RETURNS FOR TAXABLE YEAR 2010;

> THE CASE OF *COMMISSIONER OF INTERNAL REVENUE VS. NEXT MOBILE, INC.*, CANNOT BE APPLIED SINCE IN THIS CASE, THE PETITIONER IS NOT AT FAULT AND THAT CASE WAS AN EXCEPTION TO THE RULE;"[4]

Based on the foregoing, the **issue** in this case is **WHETHER THE CTA SPECIAL FIRST DIVISION IS CORRECT IN DISMISSING THE PETITION, FOR LACK OF JURISDICTION.**

Petitioner adopts and re-pleads all its allegations and arguments in the Petition for Review, in the Memorandum filed for the Petitioner and its Motion for Reconsideration, which were all filed before the CTA Division.

Again, petitioner alleges that it was not properly served with the notices and was not duly represented and the waiver of prescriptive period is violative of RMO 20-90.

Petitioner argues that the CTA Division should not reckon the period to file protest from the supposed receipt of the Formal Assessment Notice on December 18, 2014. Petitioner contends, among others, that its witness testified that they did not receive the 18 December 2014 Formal Assessment Notice and in essence stated that sometime in March 2015, their auditors received the same together with a letter dated 29 January 2015; and that the receipt of the 29 January 2015 letter prompted the filing of what the Honorable Court considered as protest.

Petitioner submits that the case of *Commissioner of Internal Revenue v. Next Mobile, Inc.* cannot be applied in this case because there is only one waiver in this case and petitioner has challenged the validity of the said waiver in the filing of what the Honorable Court and the respondent considered as the petitioner's Letter Protest dated 01 April 2015.

In his Comment, respondent argues that the grounds relied upon by petitioner in their Petition for Review were mere rehash of their arguments specified in their Motion for Reconsideration and were properly considered already by the Honorable Court in dismissing this case.

Respondent also states that the CTA Division did not err in dismissing this case because it is evident that petitioner received the FAN on December 18, 2014 and that petitioner filed a protest against the FAN on April 1, 2015.

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[4] *Rollo*, pp. 5-6.

Respondent argues that petitioner failed to file a valid protest within the thirty (30)-day period, as required by Section 228 of the 1997 Tax Code, thus, the assessment became final, executory and unappealable.

THIS COURT'S RULING

The petition is denied.

We emphasize the findings of the CTA Division, that "there is no indication that respondent violated petitioner's right to due process, and that the evidence presented by respondent showing receipt of the PAN and the FAN through petitioner's representative remained uncontroverted[.]"[5]

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[6] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

Pertinent to this case is Section 222 (b)[7] of the NIRC which provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period.[8]

The waiver in this case resulted in the extension of the period to assess

In the case of *Asian Transmission Corp. v. Commissioner of Internal Revenue,*[9] the Supreme Court reiterated that "the taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes. Hence, the Commissioner of Internal Revenue (CIR) may not be blamed for any defects in the execution of the waiver."

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[5] *Rollo*, p. 50.
[6] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.
[7] SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
xxx xxx xxx
(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
[8] *Commissioner of Internal Revenue v. Next Mobile, Inc.*, G. R. No. 212825, Dec. 7, 2015.
[9] G.R. No. 230861, September 19, 2018.

In the case of *Commissioner of Internal Revenue v. Next Mobile, Inc.,*[10] *("Next Mobile" case)* the Supreme Court, due to peculiar circumstances, treated this case as an exception to the general rule that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90[11] and RDAO *[No. 05-01]*,[12] it is invalid and ineffective to extend the prescriptive period to assess taxes. In this case, the SC ruled that the waivers are valid. Pertinent portions of which state:

> **The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as exception to this rule and find the Waivers valid for the reasons discussed below.**
>
> *First,* the **parties in this are *in pari delicto* or "in equal fault."** *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.
>
> Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.
>
> *Second,* the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in

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[10] G.R. No. 212825, December 7, 2015.
[11] SUBJECT : *Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.*
[12] SUBJECT : *Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.*

> its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.
>
> *Third*, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.
>
> *Finally,* the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities. *(Emphasis supplied)*

In the CTA *En Banc* case of *Active Multi-Marketing & Merchandising Services, Inc. v. Commissioner of Internal Revenue,*[13] this Court discussed "the *raison d' etre* behind the pronouncement in the *Next Mobile* case. The exception crafted by the Supreme Court therein, ***i.e.,*** **a defectively executed waiver may result in an extension of respondent's period to assess** internal revenue taxes, was not solely hinged on the execution of five (5) separate infirmed waivers which remained unrectified as petitioner suggests. Rather, the **doctrinal precept finds application when factual circumstances display that the parties to the execution of the waiver are in *pari delicto*, or at equal fault irrespective of the number of waiver/s**

[13] CTA EB No. 1728, March 25, 2019.

accomplished or executed." *(Emphases Supplied).* In this CTA *En Banc* case, there was only one waiver and this Court applied the *Next Mobile* case.

Based on the foregoing, this Court agrees with the CTA Division in applying the *Next Mobile* case, although there is only one defective waiver, and finding that the parties are in *pari delicto*. We reiterate with approval the findings of the CTA Division in the assailed Decision, as follows:

> In the instant case, both parties are evidently in *pari delicto.*
>
> Although petitioner, in effect, denies ever having authorized Mary Grace T. Aguilar to sign the subject Waiver, it appears however, that at the administrative level, petitioner admitted that the signatory was, in fact, authorized as shown in petitioner's letter dated April 1, 2015. The pertinent portions thereof read as follows:
>
>> "Waiver must be signed by the CIR or Revenue Official Authorized by him and that the date of acceptance should be indicated.
>>
>> The BIR provided a waiver template which the Company fill-out. The said waiver was pre-signed by two witness — Felinor Pascua and Susana Santos. <u>This waiver was returned to the BIR after the Company have it signed by their authorized representative.</u> After which, the Company didn't hear anything from the BIR about the said waiver." *(Underscoring supplied)*
>
> Thus, petitioner cannot deny that it authorized Mary Grace T. Aguilar as signatory of the subject Waiver.
>
> On the other hand, there is no showing that respondent's representative, who is presumed to know that the delegation must be in writing and duly notarized pursuant to the said BIR issuances, required from petitioner's representative, such written and notarized authorization/delegation before accepting the subject Waiver.
>
> Anent the absence of the date of acceptance by respondent, petitioner's authorized representative received the Waiver without requiring that the date of acceptance be

> indicated therein. Hence, both are equally remiss in ensuring compliance with legal requirements.
>
> In the same vein, the lack of indication that petitioner was furnished a copy of the subject Waiver could have been likewise averted to, if only petitioner and respondent made sure that the subject Waiver was fully compliant with all the legal requirements therefor.
>
> Thus, just as in the above-quoted *Next Mobile* case, the parties herein are similarly in *pari delicto,* and did not come to this Court with clean hands. **Therefore, both parties are estopped from questioning the validity of the subject Waiver because they performed contributory acts in the invalidity thereof.** [14]*(Emphases Supplied).*

Applying the *Next Mobile* case, this Court finds that the waiver in this case extended the respondent's period to assess the petitioner's internal revenue taxes for taxable year 2010 until December 31, 2014. Thus, the FAN Part I and II issued on December 18, 2014, were within the extended period to assess.

Petitioner failed to file the protest within the 30-day period from receipt of the FAN

Section 228 of the NIRC of 1997 provides:

> 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: . . . .
>
> xxx xxx xxx
>
> 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**

[14] *Rollo*, pp. 41-42.

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

Section 3.1.4 of RR No. 12-99,[15] as amended by RR No. 18-13,[16] states that:

> 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.
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if

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[15] SUBJECT : *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.*
[16] SUBJECT : *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*

it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

xxx xxx xxx

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable. *(Emphases Supplied).*

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The above-quoted provisions as well as jurisprudence is clear that "failure to file an administrative protest within 30 days from receipt of the FAN will render the assessment final, executory, and demandable."[17]

In this case, the BIR records show that the FAN part I and II dated December 18, 2014 were received on the same day by petitioner, through a certain Jamie Ordoveza. The CTA Division also ruled that "considering that petitioner did not present contrary evidence as to when it actually received the said FAN, except as that stated in the BIR Records, *i.e.,* December 18, 2014, such date shall be considered as the date of receipt of the same."[18] Protest on the FAN was on April 1, 2015. This is beyond the 30-day period after receipt within which protest may be filed.

We agree with the CTA's discussion as stated in the assailed Decision,[19] as follows:

Counting from December 18, 2014, petitioner had until January 19, 2015 (January 17, 2015 being a Saturday) within which to file its protest to the subject FAN. However, **petitioner, through Alas Oplas & Co. CPAs, filed the Protest to the said FAN only on April 1, 2015. Thus, the assessment became final, executory, and unappealable upon the expiration of the 30-day period to protest on January 19, 2015.**

As provided in Section 228 of the NIRC of 1997, the failure of a taxpayer to timely file a protest against the FAN

[17] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.
[18] *Rollo*, p. 51.
[19] *Id.*

> would render the assessment final, executory, and unappealable. In other words, **a tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 of the NIRC of 1997 can no longer be contested.** *(Emphases Supplied).*

Also, in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.,*[20] the Supreme Court (SC) categorically states that, "Section 228 of the Tax Code requires taxpayers to exhaust administrative remedies by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment. Exhaustion of administrative remedies is required prior to resort to the CTA precisely to give the Commissioner the opportunity to 're-examine its findings and conclusions' and to decide the issues raised within her competence." In this case, the SC also reiterates that, "what is appealable to the CTA are decisions of the CIR on the protest of the taxpayer against the assessments."

We agree with the CTA Division as stated in the assailed Resolution that "this Court has no jurisdiction to take cognizance of this case, because the protest of petitioner was filed beyond the period allowed by law, and therefore the subject tax assessments have become final, executory and unappealable. Hence, this Court is no longer empowered to entertain the present appeal."[21]

Based on the foregoing discussions, this Court finds no reversible error to disturb the assailed Decision and Resolution of the CTA Special First Division.

WHEREFORE, premises considered, the Petition for Review is **DENIED.** Accordingly, the assailed Decision and the Resolution promulgated on December 11, 2018 and on July 9, 2019, respectively, by the then CTA Special First Division are **AFFIRMED**.

SO ORDERED.

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

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[20] G.R. No. 221780, March 25, 2019.
[21] *Rollo*, p. 57.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(On Leave)

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 the 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