

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GETZ PHARMA (PHILS.), INC., CTA EB NO. 2435
Petitioner, (CTA Case No. 9245)

Present:

-versus-

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

HON. COMMISSIONER KIM S.
JACINTO-HENARES, HON.
ALFREDO V. MISAJON,
Regional Director, Revenue
Region No. 7 and HON.
JOSEPHINE S. VIRTUCIO,
Regional District Officer,
Revenue District No. 43-A, East
Pasig,

Promulgated:

Respondents.

SEP 15 2023

X

X

DECISION

MANAHAN, J.:

This resolves the *Petition for Review*¹ filed by petitioner Getz Pharma (Phils.), Inc. on February 9, 2021 without respondents' comment despite due notice,² pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,³ seeking the grant of the

¹ *Rollo*, CTA EB No. 2435, pp. 1-41.

² *Id.*, Records Verification dated August 25, 2022, p. 985.

³ Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA); and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA). *on*

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instant petition, the reversal and setting aside of the *Decision* dated June 9, 2020⁴ (Assailed Decision) and the *Resolution* dated December 18, 2020⁵ (Assailed Resolution) promulgated by the Second Division of the Court of Tax Appeals (CTA) in CTA Case No. 9245 entitled "*Getz Pharma (Phils.), Inc. vs. Hon. Commissioner Kim S. Jacinto-Henares, Hon. Alfredo V. Misajon, Regional Director, Revenue Region No. 7 and Hon. Josephine S. Virtucio, Regional District Officer, Revenue District No. 43-A, East Pasig*", and the issuance of an order declaring void the Preliminary Assessment Notice (PAN) dated January 8, 2015, and the Formal Letter of Demand/Final Assessment Notice (FLD/FAN), both dated January 23, 2015.

The Parties

Petitioner Getz Pharma (Phils.) Inc. is a corporation duly organized and existing under and by virtue of Philippine laws, with office at 2/F, Tower I, The Rockwell Business Center, Ortigas Avenue, Pasig City.⁶

Respondent Kim S. Jacinto-Henares was the Commissioner of Internal Revenue (CIR) vested by law in general to implement and enforce the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, or other tax laws.⁷

Respondent Hon. Alfredo V. Misajon was the Regional Director of the Bureau of Internal Revenue (BIR), Revenue Region No. 7, while respondent Hon. Josephine S. Virtucio has the Revenue District Officer of the BIR - Revenue District Office (RDO) No. 43-A- East Pasig.⁸

The Facts

On January 14, 2015, petitioner received from Revenue Region No.7, Quezon City a copy of the PAN dated January 8, 2015, assessing it with deficiency tax liabilities in the aggregate amount of Php58,888,172.57, inclusive of interest for calendar year (CY) ending December 31, 2011. On January

⁴ *Rollo*, pp. 355-371.

⁵ *Id.*, pp. 50-57.

⁶ *Rollo*, Decision dated June 9, 2020, p. 356.

⁷ *Id.*

⁸ *Id.* 

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29, 2015, petitioner filed the letter dated January 27, 2015, embodying its Reply/Answer to the PAN.⁹

Thereafter, on January 26, 2015, petitioner received the FLD/FAN dated January 23, 2015, assessing it with tax liabilities in the aggregate amount of Php60,238,702.01 for CY 2011. On February 25, 2015, petitioner filed its Protest of even date against the FLD/FAN.¹⁰

On March 18, 2015, petitioner received the Letter Notice (LN) dated March 11, 2015 issued by Revenue Region No. 7, Quezon City, informing petitioner that the "*Protest letter/request for reinvestigation dated 25 February 2015 xxx has been 'Granted' pursuant to Section 228 of the NIRC.*" The said Letter Notice also informed petitioner that the case will be forwarded to RDO No. 43A.¹¹

Subsequently, on May 28, 2015, another LN dated May 11, 2015, from RDO No. 43A was received by petitioner.¹²

On June 5, 2015, petitioner then submitted the documents requested by RDO No. 43A in compliance with its LN dated May 11, 2015. Thereafter, petitioner transmitted the copies of the Sales Book for CY 2011 to BIR RDO No. 43A on June 24, 2015.¹³

On October 5, 2015, respondent Virtucio issued a letter requesting petitioner to provide the complete series of used official receipts for CY 2011, within fifteen (15) days from receipt thereof. In reply thereto, petitioner, in its letter dated October 20, 2015, re-submitted the photocopies of the original documents of the complete series of used official receipts for CY 2011 on October 22, 2015.¹⁴

Furthermore, petitioner's letter dated November 12, 2015, resubmitted its official receipts - Booklet #4 (Series # 000251-000300) issued for CY 2011 and the Audited Financial


⁹ *Id.*

¹⁰ *Rollo*, Decision dated June 9, 2020, pp. 356-357.

¹¹ *Id.*, p. 357.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*, pp. 357-358. 

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Statement (AFS) for CY 2011, upon the request of Group Supervisor (GS) Renato M. Atos on November 13, 2015.¹⁵

Petitioner filed its original Petition for Review before the Court in Division on January 20, 2016.¹⁶

After trial, the Court in Division issued the Assailed Decision, the dispositive portion of which, reads as follow:

“WHEREFORE, premises considered, the *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.

SO ORDERED”

Aggrieved by the Decision, petitioner filed a Motion for Reconsideration which the Court in Division denied under the Assailed Resolution, the dispositive portion of which, reads as follows:

“WHEREFORE, premises considered, petitioner's Motion for Reconsideration (of the Decision dated 09 June 2020) is **DENIED** for lack of merit.

SO ORDERED.”

Thus, petitioner filed the instant Petition for Review on February 9, 2021.

On May 24, 2021, respondents were ordered to file their comment.¹⁷ However, it was found out that said notice was returned to the Court unserved with notations “moved out 9/30”.¹⁸

On March 1, 2022, petitioner was ordered¹⁹ to submit the copy of its petition for review to the current address of the respondents which it complied on March 21, 2022.²⁰

Respondent filed an *Entry of Appearance*²¹ on April 28, 2022. However, respondents still failed to file their Comment on the instant petition.²²


¹⁵ *Id.*, p. 358.

¹⁶ *Id.*

¹⁷ *Rollo*, Resolution dated May 24, 2021, pp. 952-953.

¹⁸ *Id.*, Resolution dated March 1, 2022, pp. 957-959.

¹⁹ *Id.*

²⁰ *Id.*, Manifestation and Compliance, pp. 960-963. 

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Thus, the case was submitted for decision on September 13, 2022.²³

The Issue

Whether or not the Court in Division erred in dismissing the original Petition for Review for lack of jurisdiction.

Arguments of Petitioner²⁴

Petitioner argues that the Court in Division erred in dismissing its petition based on the following grounds: (1) the FLD for taxable year (TY) 2011 having been issued in violation of its right to due process; (2) the PAN, FAN and FLD for TY 2011 issued by respondents were void for failure to comply with Section 228 of the 1997 NIRC, as amended, and Revenue Memorandum Order No. 46-04 regarding the need for certifications/sworn statements from third-party sources; (3) the BIR's right to assess value-added tax (VAT) for the 1st, 2nd, and 3rd quarters of 2011 has already prescribed; and (4) the BIR is estopped from denying that it treated the protest as a request for reinvestigation.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition was timely filed. Sections 1 and 3(b), Rule 8 of the RRCTA provide that:

SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

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xxx

xxx


SEC. 3. *Who may appeal; period to file petition.*-

(a) xxx xxx xxx

²¹ *Id.*, pp. 978-979.

²² *Id.*, Records Verification dated August 25, 2022, p. 985.

²³ Rollo, Resolution dated September 13, 2022, pp.

²⁴ *Supra*, Note 1. 

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(b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the assailed *Resolution* dated December 18, 2020 and petitioner received a copy of said resolution on January 26, 2021.

Applying the above-cited provisions, petition had fifteen (15) days from January 26, 2021 or until February 10, 2021. Thus, the filing of the instant Petition for Review on February 9, 2021 was on time.

The original Petition for Review was filed on time.

Based on the factual findings of the Court, the original petition filed before the Court in Division was based on respondents' inaction on its protest on the FLD-FAN.

Section 228 of the 1997 NIRC, as amended, 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: Provided, however, that a pre-assessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to



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said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.


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 supplied*)

Relative thereto, Section 3.1.4 of Revenue Regulations (RR) No. 12-99,²⁵ as amended by RR No. 18-2013, 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:

- (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

²⁵ 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 

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present if 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*.

If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

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

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. 

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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 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.

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such

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decision, are mutually exclusive and the resort to one bars the application of the other.”

Corollarily, in the recent case of *Light Rail Transit Authority v. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue*,²⁶ the Supreme Court ruled that in case of inaction by the CIR, the taxpayer has two options, to wit:

“In the case of a decision on the protest, the appeal must be filed 30 days from receipt of the adverse decision. On the other hand, in the case of inaction on the protest, this Court held in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue* and *Lascona Land Co., Inc. v. Commissioner of Internal Revenue* that a taxpayer may either:

(1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessment; or


(2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. This is true even if the 180-day period for the Commissioner to act on the disputed assessment had already expired.

These options are mutually exclusive and resort to one bars the application of the other.”

In the instant case, petitioner had chosen the first option.

It is undisputed that petitioner was able to file a protest to the FLD/FAN within the thirty (30)-day period under Section 228 of the NIRC of 1997, as amended. The crux of the present controversy revolves around the actions taken by the BIR after the filing of said protest.

Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides that it is the taxpayer who has the duty to state the nature of the protest, whether it is a request for reconsideration or reinvestigation. Evidently, petitioner

²⁶ G.R. No. 231238, June 20, 2022. 

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categorically designated its protest as a **request for reconsideration**.²⁷

Submission of supporting documents is not required for a request for reconsideration. Thus, petitioner can rightly assume that respondent should act on its protest within 180 days from the filing of the protest on February 25, 2015, or until **August 24, 2015**.

Instead of issuing a Final Decision on Disputed Assessment (FDDA), the Regional Director issued a Letter dated **March 11, 2015**, purportedly approving petitioner's **request for reinvestigation**. Stated otherwise, as early as March 11, 2015, the BIR had already unilaterally treated petitioner's protest as that of **reinvestigation**, and not that of reconsideration.


This was confirmed when the RDO issued the Letter dated May 11, 2015, where it was categorically stated that petitioner's protest is a request for reinvestigation, thus requiring petitioner to submit relevant supporting documents within ten (10) days from notice. Petitioner received the May 11, 2015 Letter on **May 28, 2015**, thus it had until **June 7, 2015** to submit the requested documents.

In *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,²⁸ the Supreme Court elucidated on the circumstances when estoppel may apply, *viz.*:

“x x x [T]he doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. **It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate.** Simply put, the doctrine of estoppel must be sparingly applied.” (*Boldfacing supplied*)

The doctrine of estoppel is applicable in this case. The actions by the RDO constitute estoppel on the part of respondent. Instead of issuing an FDDA in accordance with its

²⁷ Docket, CTA Case No. 9245, Vol. VII, Exhibit “P-7”, pp. 4712-4733.

²⁸ G.R. No. 178087, May 5, 2010. 

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own rules, respondent, on his own, treated petitioner's protest as a **request for reinvestigation**, which led the latter to comply with respondent's directive to submit documents.

Respondent cannot benefit from a mischievous scheme in considering the protest as a request for reinvestigation, and thereafter directing the submission by petitioner of documents in support of such "reinvestigation", even granting petitioner additional period within which to comply. After leading the taxpayer to submit additional documents, respondent now claims that the former's right to appeal has prescribed. Respondent's actions of unilaterally changing the nature of petitioner's protest, directing petitioner to submit additional documents beyond the sixty (60)-day period, and then claiming that the assessment has already attained finality after petitioner complied with respondent's directive, are simply deplorable.

In truth, petitioner did not benefit from this scheme perpetrated by respondent as no action cancelling the assessment has been made by the BIR. Truth to tell, no FDDA was issued by respondent despite petitioner's submission of the requested documents.

As afore-discussed, petitioner was compelled to comply with the Letter dated May 11, 2015, requesting for submission of relevant supporting documents within ten (10) days from receipt thereof, which petitioner did on **June 5, 2015**. Thereafter, GS Atos requested (through text messages with the representative of petitioner) for submission of additional documents due on **June 24, 2015**.²⁹ Petitioner submitted the hard and soft copies of the documents requested by GS Atos on said due date.

Notwithstanding that GS Atos' request for submission of additional documents was made through text messages, the same is not prohibited provided that such request was made by authorized BIR officials. As held by the Supreme Court in *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ vs. Commissioner of Internal Revenue*:³⁰

²⁹ Docket, CTA Case No. 9245, Vol. VII, Exhibit "P-22-1", pp. 5120-5121.

³⁰ G.R. No. 244154, July 15, 2020.



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“Notably, there is no requirement in the Tax Code x x x that the taxing authority's request for additional documents should be made in a specific form. Stated differently, nowhere in the law does it require that the request for additional documents must always and absolutely be made in written form. While written requests would be preferred because it would be easier for the BIR to keep track of the documents submitted by the taxpayer in response thereto, **the law does not explicitly prohibit verbal requests for additional documents as long as they are duly made by authorized BIR officials.**” (*Boldfacing supplied*)

The 180-day period shall be reckoned from the submission of documents, which in this case happened on **June 24, 2015**.

Notably, petitioner made further submission of documents after June 24, 2015 pursuant to the October 5, 2015 Letter of the RDO. However, these are mere re-submission of documents that are already in the possession of the revenue officers, *i.e.*, the October 22, 2015 Letter pointed out that the documents requested were already submitted in the Letter dated June 5, 2015, and the November 13, 2015 Letter stated that the requested AFS was already submitted at the start of the audit of petitioner.

Indeed, Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides that it is the taxpayer who determines which pieces of evidence may be treated as “relevant supporting documents” necessary to support the legal and factual bases of the protest. That determination was made by petitioner when it submitted all such documents on **June 24, 2015**.

In fine, respondent had 180 days from June 24, 2015, or until **December 21, 2015**, within which to act on the protest. Considering that no FDDA was issued on said date, petitioner had the option of filing a petition for review within thirty (30) days therefrom, or until **January 20, 2016**. Thus, the filing of the original Petition for Review on **January 20, 2016** vested jurisdiction with the Court in Division. 

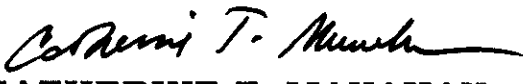
DECISION

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WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the case is hereby remanded to the Court in Division for proper determination whether petitioner is liable under the assessment.


SO ORDERED.



CATHERINE T. MANAHAN
Associate Justice

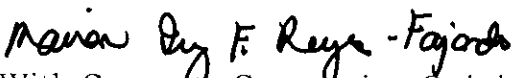
WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


(With Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


(With Separate Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


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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

cm

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

GETZ PHARMA (PHILS.), INC.,
Petitioner,

CTA EB NO. 2435
(CTA Case No. 9245)

Present:

- versus -

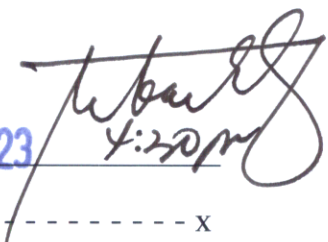
DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
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CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

HON. COMMISSIONER KIM S.
JACINTO-HENARES, HON.
ALFREDO V. MISAJON, Regional
Director, Revenue Region No. 7
and HON. JOSEPHINE S.
VIRTUCIO, Regional District
Officer, Revenue District No.
43-A, East Pasig,

Respondent.

Promulgated:


SEP 15 2023

A handwritten signature in black ink is written over a blue digital date stamp that reads 'SEP 15 2023'. The signature appears to be 'T. Manahan'.

x ----- x

CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Catherine T. Manahan, granting the present Petition for Review filed by petitioner Getz Pharma (Phils.), Inc. (**petitioner**) against respondent Hon. Commissioner Kim S. Jacinto-Henares, et al. (**respondent/CIR**), thereby reversing and setting aside the Second Division's Decision dated 09 June 2020¹ (**Assailed Decision**) and Resolution dated 18 December 2020² (**Assailed** 

¹ *Rollo*, pp. 355-371; Penned by Associate Justice Juanito C. Castañeda, Jr. (Ret.).
² *Id.*, pp. 50-57.

CONCURRING OPINION

CTA EB No. **2435** (CTA Case No. 9245)

Getz Pharma (Phils.), Inc. v. Hon. Commissioner Kim S. Jacinto-Henares, et al.

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x ----- x

Resolution), and ordering the case to be remanded to the Court in Division for the proper determination of petitioner's liability under the assessment.

Previously, I concurred in the Assailed Decision³ that dismissed the prior Petition for Review for lack of jurisdiction. In the Assailed Decision, the Second Division found that petitioner filed a Protest to the Formal Letter of Demand (**FLD**) by way of a request for reconsideration⁴ on 25 February 2015. Counting 180 days therefrom, respondent had until 24 August 2015 to act on the said protest. However, beyond the prescriptive period of thirty (30) days under Section 228⁵ of the National Internal Revenue Code (**NIRC**) of 1997, as amended, petitioner only filed the instant case before this Court on 20 January 2016.⁶ As a result, this Court did not take cognizance of the petition.

After a second hard look, I have decided to forego my previous position in favor of the present *ponencia*.

Section 3.1.4 of Revenue Regulations (**RR**) No. 18-13⁷ defines a request for reinvestigation as referring 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.

Relative thereto, in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*⁸, the Supreme Court ruled that a request for reinvestigation shall only suspend the running of statute of limitations if the same is granted by the CIR:

³ Supra at note 1.

⁴ Exhibit "P-7", Division Docket, Volume VII, pp. 4712-4733.

⁵ **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: *Provided, however,* That a preassessment notice shall not be required in the following cases:

...

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

⁶ Division Docket, Volume I, pp. 10-43, excluding attachments.

⁷ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

⁸ G.R. No. 139736, 17 October 2005; Citations omitted, emphasis, italics and underscoring in the original text.

CONCURRING OPINION

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...

In the case of *Republic of the Philippines v. Gancayco*, taxpayer Gancayco requested for a thorough reinvestigation of the assessment against him and placed at the disposal of the Collector of Internal Revenue all the evidences he had for such purpose; yet, the Collector ignored the request, and the records and documents were not at all examined. Considering the given facts, this Court pronounced that —

...The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted, in order to effect suspension. (Collector vs. Suyoc Consolidated, supra; also Republic vs. Ablaza, supra). Moreover, the Collector gave appellee until April 1, 1949, within which to submit his evidence, which the latter did one day before. There were no impediments on the part of the Collector to file the collection case from April 1, 1949.

...

In *Republic of the Philippines v. Acebedo*, this Court similarly found that —

...[T]he defendant, after receiving the assessment notice of September 24, 1949, asked for a reinvestigation thereof on October 11, 1949 (Exh. A). **There is no evidence that this request was considered or acted upon.** In fact, on October 23, 1950 the then Collector of Internal Revenue issued a warrant of distraint and levy for the full amount of the assessment (Exh. D), but there was no follow-up of this warrant. Consequently, **the request for reinvestigation did not suspend the running of the period for filing an action for collection.**

...

The Supreme Court applied this principle in *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*⁹ (**Philippine Global**). In the said case, respondent therein filed two (2) letters of protest when it received a Formal Assessment Notice (FAN) from the CIR. More than eight (8) years from the assessment, the CIR issued a final decision denying the protest letters and assessed respondent with deficiency income taxes. On the belief that the period to collect had already prescribed, it filed its judicial appeal before this Court. We then determined that respondent's protest letters cannot constitute as requests for reinvestigation which could toll the running of the prescriptive period to collect. Thus, having found that CIR's final decision was issued more than three (3) years from the time the FAN was issued, We ruled that CIR's right to collect had prescribed and cancelled the assessment in respondent's favor. Upon CIR's appeal and main argument that respondent's protest letters were requests for reinvestigation, the Supreme Court disagreed and declared that it was inconceivable to treat them as requests for reinvestigation when respondent vehemently refused to submit

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G.R. No. 167146, 31 October 2006; Emphasis and italics in the original text and supplied.

CONCURRING OPINION

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any new and additional evidence, thus finding that the assessment had prescribed:

...

The Tax Code of 1977, as amended, provides instances when the running of the statute of limitations on the assessment and collection of national internal revenue taxes could be suspended, even in the absence of a waiver, under Section 271 thereof which reads:

Section 224. *Suspension of running of statute.* – The running of the statute of limitation provided in Sections 268 and 269 on the making of assessments and the beginning of distraint or levy or a proceeding in court for collection in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner;** when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected xxx.

Among the exceptions provided by the aforecited section, and invoked by the CIR as a ground for this petition, is the instance when the taxpayer requests for a reinvestigation which is granted by the Commissioner. However, this exception does not apply to this case since the respondent never requested for a reinvestigation. **More importantly, the CIR could not have conducted a reinvestigation where, as admitted by the CIR in its Petition, the respondent refused to submit any new evidence.**

...

In the present case, the separate letters of protest dated 6 May 1994 and 23 May 1994 are requests for reconsideration. **The CIR's allegation that there was a request for reinvestigation is inconceivable since respondent consistently and categorically refused to submit new evidence and cooperate in any reinvestigation proceedings.**

...

Contrary to the foregoing pronouncement, in this case, upon respondent's notice that he or she is treating petitioner's protest as a request for reinvestigation (despite being described as a request for reconsideration) and further directing it to submit documents, petitioner willingly did so. Hence, with respondent's grant of the request as a reinvestigation and with the submission of new and additional documents, the protest is validly considered as a request for reinvestigation and tolled the running of the prescriptive period to collect.

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Corollarily, the counting of the 180-day period pursuant to Section 228¹⁰ of the NIRC of 1997, as amended, shall be reckoned from the date that petitioner submitted the required documents, as in this case, 24 June 2015. On the lapse of the 180-day period, or on 25 December 2015, and with the CIR's inaction on the protest, petitioner had until 20 January 2016 to file an appeal before this Court. Having determined that petitioner filed the prior petition on 20 January 2016, this Court has jurisdiction over the instant case.

Given the above disquisitions, I find the conclusion in the *ponencia* proper. Thus, I join the vote to **GRANT** the petition filed by the Getz Pharma (Phils.), Inc.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

¹⁰ Supra at note 5.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GETZ PHARMA (PHILS.), INC.,
Petitioner,

CTA EB No. 2435
(CTA Case No. 9245)

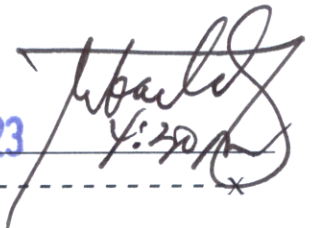
Present:

- versus -

HON. COMMISSIONER S.
JACINTO-HENARES, HON.
ALFREDO V. MISAJON, Regional
Director, Revenue Region No. 7 and
HON. JOSEPHINE S. VIRTUCIO,
Regional District Officer, Revenue
District No. 43, East Pasig,
Respondents.

DEL ROSARIO, PJ,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID,
FERRER-FLORES, II.

Promulgated:
SEP 15 2023



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SEPARATE CONCURRING OPINION

REYES-FAJARDO, I.:

I concur in the *ponencia* of my esteemed colleague, Associate Justice Catherine T. Manahan that petitioner Getz Pharma (Phils.), Inc.'s Petition for Review before the Court of Tax Appeals (CTA) Second Division (Court in Division) was timely filed; in particular, within the reglementary period for appealing an assessment in case of inaction on the part of the Commissioner of Internal Revenue (CIR) as set out in Section 228 of the National Internal Revenue Code, as amended, (Tax Code). I would like to take this opportunity to expound on my position.

At the outset, I underscore the fundamental consideration that no person shall be deprived of property without due process of law. In light of this, the State shall only be allowed to assess and collect



deficiency taxes if the procedure taken by the authorities has afforded the taxpayer ample opportunity to refute the findings against it. Consequently, the law provides the due process requirements during the assessment process. In particular, the Tax Code expressly recognizes the taxpayer's right to *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 preassessment notice shall not be required in the following cases:

x x x

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within **thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted**; otherwise, the assessment shall become final.

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. (Emphasis supplied)

The above-quoted provision mentions the *two kinds of administrative protest*: a) request for request for reconsideration and b) request for reinvestigation. Further, it refers to *four periods* relative to protesting an assessment, *viz.*:

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Period	Purpose	Reckoning Point
(1) 30 days	Given to the taxpayer to file administrative protest	Counted from receipt of assessment
(2) 60 days	Given to taxpayer to submit all relevant documents in support of the protest	Counted from filing of protest
(3) 180 days	Given to CIR to act on the protest	Counted from the submission of documents
(4) 30 days	Given to taxpayer to appeal to the CTA	Counted from: a) Receipt of CIR's decision, in case CIR issues a formal denial of the protest b) Lapse of 180-day period within which CIR failed to act on the protest

In case the CIR does not act on the protest within 180 days, this inaction shall be regarded as a denial thereof. "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."¹ The CIR has by statute a period of 180 days counted from the submission of documents to rule on the protest. As worded, this reckoning point is irrespective of the type of protest filed.

On the other hand, in turn, the Secretary of Finance, upon recommendation of respondent CIR, issued Revenue Regulation No. (RR) 18-2013² to implement Section 228 of the Tax Code. For reference, I reproduce the relevant portions thereof, to wit:

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

(i) Request for reconsideration – refers to a plea of re-evaluation of an assessment on the basis of existing records **without**

¹ *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

² *Amending Certain Sections of Revenue Regulations No. 12-99*, November 28, 2013.

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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 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.

x x x

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

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.

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.

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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 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.

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other. (Emphasis supplied)

The above-quoted portions of the regulation delineate between the two kinds of administrative protest. While both types are regarded as requests for re-evaluation of the tax assessment, the bases upon which these protests shall be re-evaluated are different: a request for *reconsideration on existing evidence*; a request for *reinvestigation on newly discovered or additional documents*.

In contrast to the import of Section 228, RR 18-2013 bars the application of the 60-day period in requests for reconsideration. In other words, under the regulation, a taxpayer that seeks *reconsideration*

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is not given additional time but is required to submit the relevant documents in support of its protest *upon filing* thereof. On the other hand, in a request for *reinvestigation*, the taxpayer is given *60 days* to prepare its submissions.

Consequently, it appears the 180-day period given to the CIR to act on the protest shall be reckoned differently: from the *filing date* the *request for reconsideration* was filed and, then, from the *submission date* the relevant documents in support of the *request for reinvestigation*, such submission having been within 60 days from the date the protest was filed.

Verily, the interpretation given by RR 18-2013 relative to the 60-day and 180-day periods under Section 228 is only in consonance with the nature of a *reinvestigation*. As it involves *newly discovered evidence*, the taxpayer is given ample time to prepare its documents for submission and, in turn, the CIR's time to re-evaluate on the basis of evidence presented to it for the first time.

However, it is my humble view that the reglementary periods relative to a taxpayer's statutory remedies to an assessment should not be given such a strict interpretation, especially if it would only deprive the taxpayer an opportunity to present its case in court.

In the present case, the following are not disputed: *First*, petitioner filed a **request for reconsideration** on February 25, 2015 to protest Formal Letter of Demand/Final Assessment Notice dated January 8, 2015 (FLD/FAN). *Second*, the CIR's authorized representative³ regarded petitioner's protest as a **request for reinvestigation**. *Third*, on separate occasions, the BIR required petitioner to submit **additional documents** relative to its protest: in a Letter Notice dated **May 11, 2015**, *via* various text messages from Group Supervisor Renato M. Atos, and in a Letter dated **October 5, 2015**. *Fourth*, upon the above-enumerated BIR directives, petitioner submitted the required documents on June 5, 2015, **June 24, 2015**, October 22, 2015, and, finally, on November 13, 2015.

To be clear, the BIR issued express instructions for petitioner to submit additional documents despite the latter having only filed a

³ Pursuant to Letter Notice dated March 11, 2015 issued by BIR Revenue Region No. 7, Quezon City.

an

request for reconsideration. Further, counting from the date of filing of petitioner's protest on February 25, 2015, the last day of the supposed 60-day period for submission was on April 27, 2015.⁴ However, the BIR made all its documentary requests beyond this date.

Given these considerations, I agree with the *ponencia* that petitioner cannot be faulted for regarding its documentary submission on November 12, 2015 as the date from which the 180-day period for the CIR's review shall be reckoned. A prudent taxpayer is only expected to comply with the BIR's directives. Had petitioner ignored the BIR's requests and proceeded directly to this Court, it ran the risk of having its protest denied on the ground of insufficient evidence or refusal to comply with a lawful administrative order. As things stood, petitioner had no reason to disobey the tax authorities, especially when it appeared that the BIR made motions of re-evaluating the assessment through a **reinvestigation** instead of a mere reconsideration thereof.⁵

"[T]he option was made in good faith, **not as an afterthought or 'legal maneuver.'**" There is nothing on the records countering that petitioner acted in **good faith** when it afforded the CIR sufficient time to re-evaluate its case.⁶

Significantly, that petitioner counted the 180-day period from June 24, 2015 is: *first*, sanctioned by the plain wording of Section 228 of the Tax Code, which reckons the 180-day period of review from the **submission of documents**, irrespective of the type of protest filed; *second*, consistent with the **doctrine of exhaustion of administrative remedies**. It must be understood that the CIR's period of review shall be refreshed anew in light of petitioner's additional documentary submissions to give the CIR "the opportunity to 're-examine its

⁴ The 60th day fell on April 26, 2015, which was a Sunday. Thus, the last day of the 60-day period is deemed to have fallen on the following business day.

⁵ In the *Misnet, Inc., v. Commissioner of Internal Revenue* (G.R. No. 210604, June 03, 2019), the Supreme Court held that procedural / reglementary periods cannot be applied in a case where the BIR issued express instructions to the taxpayer contrary to established procedure and the latter simply relied thereon. It opined, "Hence, petitioner's belated filing of an appeal with the CTA is not without strong, compelling reason. We could say that petitioner was merely exhausting all administrative remedies available before seeking recourse to the judicial courts. While the rule is that a taxpayer has 30 days to appeal to the CTA from the final decision of the CIR, the said rule could not be applied if the Assessment Notice itself clearly states that the taxpayer must file a protest with the CIR or the Regional Director within 30 days from receipt of the Assessment Notice. Under the circumstances obtaining in this case, we opted not to apply the statutory period within which to appeal with the CTA considering that no final decision yet was issued by the CIR on petitioner's protest. The subsequent appeal taken by petitioner is from the inaction of the CIR on its protest." (Emphasis supplied)

⁶ See *Light Rail Transit Authority v. Bureau of Internal Revenue* (G.R. No. 231238, June 20, 2022).

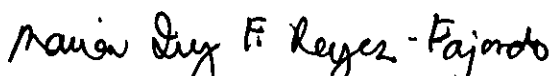
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findings and conclusions' and to decide the issues raised within [its] competence."⁷

All told, BIR officials cannot act in a manner that leaves the taxpayer in a quandary⁸ or, worse, deprives the opportunity to challenge the assessment. The process of the CIR's re-evaluation must be sufficiently unequivocal and transparent, in a way that allows the taxpayer to take recourse to the CTA at the opportune time.⁹

The measures employed by tax authorities in assessing and collecting taxes must be reasonable and in accordance with prescribed procedure.¹⁰ That their functions must be performed by these standards is demanded by the pressing need for fair play, regularity, and orderliness in administrative action.¹¹

Based on these considerations, I vote to GRANT the petition.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

⁷ *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

⁸ *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 171251, March 5, 2012, 683 PHIL 430-442.

⁹ *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 171251, March 5, 2012, 683 PHIL 430-442.

¹⁰ *Id.*

¹¹ *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.