

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS

Quezon City

EN BANC

LARRY E. SEGAYA/LES
ENGINEERING AND
CONSTRUCTION,

Petitioner,

CTA EB NO. 2526
(CTA Case No. 9875)

Present:

-versus-

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

COMMISSIONER OF THE
BUREAU OF INTERNAL
REVENUE,

Respondent.

Promulgated:

DEC 13 2022

3:48pm

X-----X

DECISION

DEL ROSARIO, P.J.,

Before this Court is a "Petition for Review *En Banc*" filed by petitioner Larry E. Segaya/LES Engineering and Construction on October 9, 2021, assailing the Decision dated February 26, 2021 rendered by the Court's Second Division in CTA Case No. 9875 dismissing petitioner's Petition for lack of jurisdiction and its Resolution dated July 14, 2021 denying petitioner's Motion for Reconsideration for lack of merit.

THE PARTIES

Petitioner Larry E. Segaya is the owner of LES Engineering and Construction,¹ a construction firm based in Iloilo City, with office

¹ A.2 of the Judicial Affidavit of Larry E. Segaya, CTA Case No. 9875 Docket, p. 231.



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address at LES Engineering and Construction, Lot No. 7, Block 14, Jefferson's Ville Subd., Pali, Mandurriao, Iloilo City.² Petitioner Segaya is a taxable entity.³

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed authority to administer and enforce all revenue laws in the land, with office address at the Bureau of Internal Revenue (BIR) National Building, Diliman, Quezon City.⁴

THE FACTS

On November 16, 2012, Letter of Authority (LOA) No. LOA-074-2012-00000280 (SN: eLA201000056710) was issued by Regional Director Romulo L. Aguila, Jr. of BIR Revenue Region No. 11 – Iloilo City, authorizing Revenue Officer Michelle Ann Gayoma and Group Supervisor Evansuenda Custodio of Revenue District Office No. 074-Iloilo City, Iloilo, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2011 to December 31, 2011.⁵

Petitioner executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code on August 1, 2014, and the same was accepted by respondent on August 18, 2014,⁶ extending the period of assessment of tax until December 31, 2015.⁷

A Preliminary Assessment Notice (PAN) dated November 19, 2015, with Details of Discrepancies, was issued by Regional Director Esmeralda M. Tabule of BIR Revenue Region No. 11, informing petitioner of the BIR's findings of deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and suggested compromise penalty, for calendar year 2011.⁸

² Par. 6, The Parties, Petition for Review *En Banc*, Rollo, p. 2.

³ Par. 2, Summary of Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 9875 Docket, p. 133; assailed Decision, Rollo, p. 21.

⁴ Par. 1, Summary of Facts, JSFI, CTA Case No. 9875 Docket, p. 133; assailed Decision, Rollo, p. 22.

⁵ Par. 1, Antecedents (Administrative Level), assailed Decision, Rollo, p. 22.

⁶ Par. 2, Antecedents (Administrative Level), assailed Decision, Rollo, p. 22.

⁷ Exhibit "R-9", BIR Records, p. 202.

⁸ Exhibit "P-2", CTA Case No. 9875 Docket, pp. 238-241; Exhibit "R-13", BIR Records, pp. 306-309.

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Petitioner received the PAN on December 21, 2015,⁹ and protested the same on January 12, 2016 in its Letter Response/Protest dated January 4, 2016.¹⁰

In a Letter dated January 28, 2016, Regional Director Tabule replied to petitioner's Letter dated January 4, 2016, stating therein that the Formal Letter of Demand (FLD) dated December 17, 2015 was already issued and served to petitioner through registered mail.¹¹

Petitioner then filed his Protest/Request for Reconsideration dated March 12, 2016 on March 21, 2016, requesting that the FLD be reconsidered and set aside on the grounds that: (i) the assessment has no factual and legal basis; (ii) petitioner was denied due process of law; and, (iii) the right of the BIR to assess and collect revenue taxes has already prescribed.¹²

In a Letter dated May 30, 2017, Revenue District Officer (RDO) Lilivic Minguez-Gatdula of Revenue District Office No. 74, Iloilo City, found that there is no merit on the issues raised in petitioner's Protest/Request for Reconsideration dated March 12, 2016, and informed petitioner that her office will continue the assessment procedure.¹³

Petitioner filed his Appeal dated August 11, 2017 before the office of respondent, praying that the letter dated May 30, 2017 of RDO Minguez-Gatdula be reversed and set aside.¹⁴

In the meantime, Regional Director Alberto S. Olasiman of Revenue Region No. 11-Iloilo City issued the Final Decision on Disputed Assessment (FDDA) dated September 12, 2017, which petitioner received on October 27, 2017, denying petitioner's Protest/Request for Reconsideration dated March 12, 2016 on the

⁹ A.12 of the Judicial Affidavit of Larry E. Segaya, CTA Case No. 9875 Docket, p. 233.

¹⁰ BIR Records, pp. 322-326; Assailed Decision, Rollo, p. 22.

¹¹ Exhibit "P-5", CTA Case No. 9875 Docket, p. 259; Par. 4, Antecedents (Administrative Level), assailed Decision, Rollo, p. 22.

¹² Exhibit "R-15", BIR Records, pp. 333-342.

¹³ Exhibit "P-7", CTA Case No. 9875 Docket, pp. 274-275; Par. 7, Antecedents (Administrative Level), assailed Decision, Rollo, p. 23.

¹⁴ Exhibit "P-8", CTA Case No. 9875 Docket, p. 276-277; BIR Records, 370-373; Par. 8, Antecedents (Administrative Level), assailed Decision, Rollo, p. 413.



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ground that the issues raised in the said protest letter were found to be without merit as per Letter Reply dated May 30, 2017.¹⁵

Petitioner, through counsel, filed with respondent a Request for Reconsideration/Reinvestigation on November 25, 2017.¹⁶

Due to the alleged inaction of respondent on the said Request for Reconsideration/Reinvestigation, petitioner filed the Petition on July 16, 2018,¹⁷ which was raffled to the Court's Second Division (Court in Division).

After trial, the Court in Division promulgated the assailed Decision on February 26, 2021, the dispositive portion of which reads:

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

SO ORDERED."

On March 15, 2021, petitioner filed a Motion for Reconsideration which was denied for lack of merit by the Court in Division in its Resolution dated July 14, 2021.¹⁸ A copy of the said Resolution was received by petitioner on September 2, 2021.¹⁹

Petitioner filed *via* registered mail the present Petition for Review *En Banc* on October 9, 2021.²⁰

In a Resolution dated January 4, 2022, the Court directed respondent to comment on the Petition for Review within ten (10) days from notice.²¹

Respondent, however, failed to file a comment as per Records Verification dated March 9, 2022.²²

¹⁵ Exhibit "P-10", CTA Case No. 9875 Docket, pp. 282-283; Exhibit "R-21", BIR Records, pp. 389-390; par. 10, Antecedents (Administrative Level), assailed Decision, Rollo, pp. 23-24.

¹⁶ Par. 10, Antecedents (Administrative Level), assailed Decision, Rollo, p. 10.

¹⁷ Petition, CTA Case No. 9875 Docket, pp. 10-18.

¹⁸ Rollo, pp. 40-45.

¹⁹ Rollo, p. 39.

²⁰ Rollo, pp. 1-178.

²¹ Rollo, p. 181-182.

²² Rollo, p. 183.



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Pursuant to Resolution dated April 6, 2022, the case was referred to mediation in the Philippine Mediation Center - Court of Tax Appeals (PMC-CTA).²³

Subsequently, PMC-CTA submitted on May 31, 2022 a Back to Court [Report], returning the case to the Court *En Banc* since petitioner refused to undergo mediation.²⁴

The case was submitted for decision on July 19, 2022.²⁵

ASSIGNED ERRORS

Petitioner raised the following errors allegedly committed by the Court in Division, to wit:

- I. The Court in Division erred in not admitting into evidence its Exhibit "P-1", which refers to the undated, un-notarized and blank filled Waiver of the Defense of Prescription;
- II. The Court in Division erred in denying the issuance of the *Subpoena Ad Testificandum and Duces Tecum* to Sergio C. Pascual, despite having already issued the February 4, 2019 Order granting petitioner's motion to add and present Sergio C. Pascual as adverse witness; and,
- III. The Court in Division erred in not resolving the vital and important issue of whether or not the BIR's right to assess petitioner of the alleged tax deficiency, the subject matter of the case, has prescribed.

ISSUE

Whether or not the Court in Division committed the following errors, namely: (i) denying admission in evidence of petitioner's Exhibit

²³ Presiding Justice Roman G. Del Rosario registered a Dissenting Opinion stating that in cases pending with the Court *En Banc*, referral to mediation shall be made only after the filing of the Comment, citing item II of A.M. No. 11-1-5-SC-PHILJA (Re: Interim Guidelines for Implementing Mediation in the Court of Tax Appeals), and *sans* any comment filed by respondent, the referral of the case to mediation will only unduly delay the proceedings (Rollo, pp. 188-189).

²⁴ Rollo, p. 198.

²⁵ Rollo, pp. 206-207.



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“P-1”; (ii) denying the request for issuance of the *Subpoena Ad Testificandum and Duces Tecum* to Sergio C. Pascual; and, (iii) not resolving the issue of prescription.

PETITIONER'S ARGUMENTS

Anent the denial of Exhibit “P-1” (*Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code*), petitioner argues that: (i) he allegedly explained his predicament in not presenting the original copy thereof considering that the same is in the possession of the BIR Revenue Region No. II; (ii) the denial of Exhibit “P-1” greatly crippled his defense against the wanton and oppressive tax assessment; (iii) had it not been denied, Exhibit “P-1” would clearly show that the Waiver was undated as to its execution and acceptance, not notarized, and not signed by respondent or a duly authorized representative of respondent; thus, petitioner could have easily established the invalidity of the Waiver; (iv) an invalid waiver did not toll nor extend the period to assess tax; and, (v) the circumstances of this case warranted the relaxation and liberal interpretation of the rules on admissibility since petitioner is faced with a tax assessment that came out of thin air or merely based on information provided by a “so-called third party informant” who hails from a region far away from the place where the petitioner conducts business.

Regarding the denial of the Issuance of the *Subpoena Ad Testificandum and Duces Tecum* to Sergio C. Pascual, petitioner claims that (i) he was surprised considering that the Court in Division already issued an Order dated February 4, 2019 which granted petitioner’s motion to add and present Sergio C. Pascual as adverse witness; (ii) the key to the just and proper determination of the question of the validity and legality of the subject tax assessment lie with Sergio C. Pascual himself, being the BIR’s so-called third party informant; (iii) no other evidence is more credible and plausible than that which is coming straight from the informant’s mouth; (iv) there is no law, rule or regulation which prohibits the presentation of an adverse witness; (v) he was not only denied ample opportunity to establish his defense against the subject tax assessment but was also denied the chance to confront his accuser and the source of the questioned tax assessment.

Petitioner contends that even assuming that the BIR’s assessment has become final, executory and demandable for failure to timely file the Petition before the Court in Division, nevertheless, petitioner submits that it is not liable to pay the assessed tax that has already prescribed. According to petitioner, the pieces of evidence

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established the fact that the right of respondent to assess has already prescribed when the Final Assessment Notices (FAN) were sent and released by BIR Revenue Region No. 11.

THE COURT *EN BANC*'S RULING

The Court En Banc acquired jurisdiction to take cognizance of the present "Petition for Review En Banc"

Section 2, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

"Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture [.]”

Section 3(b), Rule 8 of the RRCTA, as amended, provides:

"Sec. 3. Who may appeal; period to file petition. –

xxx

(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.”

As the present Petition for Review *En Banc* seeks the review of the assailed Decision and assailed Resolution of the Court in Division in CTA Case No. 9875, involving an appeal from the inaction of

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respondent on petitioner's administrative appeal of the FDDA which was issued by respondent's authorized representative, the Court *En Banc* has appellate jurisdiction over the subject matter of the present Petition for Review *En Banc*.

Anent the timeliness of the filing of the Petition for Review *En Banc*, the Court notes that petitioner received a copy of the assailed Resolution on September 2, 2021.²⁶ Petitioner had until **September 17, 2021** to file his Petition for Review before the Court *En Banc*.

From September 16, 2021 to October 2021, however, **the filing of pleadings was suspended** pursuant to Supreme Court Administrative Circular Nos. 72-2021 and 75-2021. The filing of pleadings **resumed seven (7) calendar days from October 20, 2021** pursuant to Supreme Court Administrative Circular No. 83-2021 dated October 18, 2021. Clearly, the filing of the present Petition for Review *En Banc* on **October 9, 2021** was made within the prescribed period.

The Court *En Banc* therefore has acquired jurisdiction to take cognizance of the present Petition for Review *En Banc*.

The Court in Division correctly dismissed the Petition in CTA Case No. 9875

Records reveal that in his Petition in CTA Case No. 9875, **petitioner was appealing the inaction of respondent on his Request for Reconsideration/Reinvestigation filed on November 25, 2017**, anent the FDDA dated September 12, 2017 issued by Regional Director Olasiman, which petitioner received on October 27, 2017.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the procedure and manner upon which a taxpayer may protest an assessment, including a remedy to seek redress of the inaction or decision on the disputed assessment, *viz.*:

"SECTION 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:

²⁶ Rollo, p. 39.



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

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.
(Boldfacing supplied)

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

"3.1.4 Disputed Assessment. - The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. xxx

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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.**



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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." *(Boldfacing supplied)*

A taxpayer has four (4) options after the filing of a protest to the FLD, depending on whether there was action or inaction on the part of the CIR or his authorized representative, viz.:

1. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR or the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the whole or partial denial of the protest;

2. If the protest is wholly or partially denied by the CIR himself, the taxpayer may appeal to the CTA within thirty (30) days from receipt of the whole or partial denial of the protest;

3. If the CIR's authorized representative fails to act upon the protest within 180 days from the filing of the protest (if the protest is a request for reconsideration) or from submission of the required supporting documents (if the protest is a request for reinvestigation), then the taxpayer may appeal to the CTA within thirty (30) days from the lapse of the 180-day period; or,

4. If the CIR's authorized representative wholly or partially denies the protest within 180 days and the taxpayer (instead of appealing to the CTA) appeals to the CIR, the CIR has the remaining of the 180 days within which to act, failing which, the taxpayer may either await the decision of the CIR or elevate the inaction to the



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CTA, within thirty (30) days from receipt of the CIR's decision or from the lapse of the 180-day period reckoned from the date of the filing of the protest (if the protest is a request for reconsideration) or from the date of the submission of the required supporting documents in support of the protest (if the protest is a request for reinvestigation).

In determining the timeliness of an appeal from the inaction of the CIR, a plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99, as amended, reveals that there is only **one (1) "180-day period" of inaction** to speak of which shall be counted from the date of filing of the protest (if the protest is a request for reconsideration) or from the submission of the relevant supporting documents (if the protest is a request for reinvestigation) and not from the date when the decision of the CIR's authorized representative was appealed to the CIR.

There is nothing in Section 228 of the NIRC of 1997, as amended and RR No. 12-99, as amended, which provides for a separate 180-day period for the CIR's representative to act on the protest and another 180-day period for the CIR to decide the appeal on the decision rendered by the CIR's authorized representative for the purpose of computing the 30-day period within which to appeal to the CTA.

What is clear is that in case there is inaction on the part of the CIR on an administrative appeal, the options of the taxpayer is to (1) appeal to the CTA within thirty (30) days from the expiration of the 180-day period (counted from the filing of the protest if the protest is a request for reconsideration or from the submission of supporting documents if the protest is a request for reinvestigation) or (2) await the decision of the CIR (which decision may be issued even after the lapse of the 180-day period) and then file an appeal with the CTA within thirty (30) days from receipt of the decision.

On this point, the categorical pronouncement in *Nueva Ecija II Electric Cooperative Inc. Area II (NEECO II) vs. Commissioner of Internal Revenue*²⁷ is instructive, viz.:

"As correctly ruled by the CTA EB, Section 228 of Republic Act (RA) No. 8424, or the National Internal Revenue Code, as amended (hereafter, Tax Code) unmistakably provides that the **one hundred eighty (180)-day period** should be reckoned from the 'submission of documents,' which in this case was on 19 September 2016. Perforce, the statutory 180-day period lapsed on 18 March 2017. From such point, petitioner had thirty (30) days, or until 17 April

²⁷ G.R. No. 258101, April 19, 2022.



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2017, to elevate the case to the CTA. However, it filed its Petition only on 2 June 2017, which is beyond the reglementary period provided by the law. Notably, **Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for alternative courses of action to the taxpayer upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of respondent Commissioner on Internal Revenue (respondent), including the option of elevating the protest to the respondent himself through a request for reconsideration. However, nowhere in said provision does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal.** As aptly observed by the CTA EB, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law. Necessarily, taxpayers must exercise their rights in the manner and within the periods provided by statute and the pertinent regulations. 'It bears to stress that the perfection of an appeal within the statutory period is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review.'" (*Boldfacing supplied*)

In *NEECO II*, the Supreme Court sustained the CTA in dismissing the case for lack of jurisdiction as the appeal was filed beyond the 30-day period after the lapse of the 180-day period under Section 228 of the NIRC of 1997, as amended.

In the present case, when the FDDA was issued by Regional Director Olasiman on October 27, 2017, the 180-day period counted from the date of the filing of petitioner's Protest/Request for Reconsideration of the FLD on March 21, 2016 already lapsed on September 17, 2016. In short, the FDDA was issued beyond the 180-day period. Thus, when petitioner filed his Request for Reconsideration/Reinvestigation of the FDDA on **November 25, 2017** with respondent, there was no more 180-day period to speak of. To reiterate for emphasis, **the 180-day period lapsed on September 17, 2016.**

Even assuming that the 180-day period may be reckoned from November 25, 2017, the 180-day period lapsed on May 24, 2018 and the 30-day period to go the CTA ended on June 23, 2018. As oft-repeated, the Petition in CTA Case No. 9875 was filed on July 16, 2018 or way beyond June 23, 2018.

At this point, the Court *En Banc* finds it worthy to quote with approval the disquisition of the Court in Division in the assailed Decision, *viz.*:



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“Records show that petitioner filed his **Protest/Request for Reconsideration on March 21, 2016**. Counting from this date, **the 180-day period ended on September 17, 2016**. Thus, should petitioner have chosen to appeal the inaction before this Court, petitioner can only do so until October 17, 2016. Correspondingly, the filing of the instant Petition for Review on July 16, 2018 was belatedly made.

The issuance of the FDDA on September 12, 2017 does not negate the rule stated in Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013, since such rule is clear, i.e., the 180-day period in case of an administrative appeal is “*counted from the date of filing of the protest*”.

Apparently, **once the said 180-day period lapses, there is no other remedy for the concerned taxpayer except to wait for the decision of respondent over the administrative appeal, and upon receipt thereof, appeal such decision with this Court within thirty (30) days**. This is a reasonable reading of Section 228 of the NIRC of 1997, since this provision establishes **only one 180-day period**, for the purpose of appealing before this Court an inaction over a disputed assessment. Consistent therewith, Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013, likewise recognizes **only one 180-day period**, even when it has introduced the concept of an administrative appeal over an FDDA issued by respondent's duly authorized representative.

As a corollary, **the filing of an administrative appeal before respondent does not give the concerned taxpayer a fresh 180-day period**, despite the lapse of the original 180-day period. But in this case, even assuming that a fresh 180-day period is given by law for administrative appeals before respondent, the instant Petition for Review is still belatedly filed. Counting from the filing of petitioner's Request for Reconsideration/Reinvestigation before respondent on November 25, 2017, the supposed another 180-day period ends on May 24, 2018. From this latter date, the supposed 30-day period to appeal ends on June 23, 2018. Considering that the instant Petition for Review was filed only on July 16, 2018, the same is still definitely filed way beyond the appeal period as assumed.” *(Boldfacing supplied)*

Since the present Petition for Review was filed way beyond the thirty (30)-day reglementary period to appeal an inaction on the administrative protest/appeal, the Court in Division was deprived of jurisdiction to take cognizance of the case. Thus, the Court in Division cannot decide the case on the merits²⁸ as the only power left with it was to dismiss the case.

It is well-settled that perfection of appeal in the manner and within the period laid down by law is not only mandatory but also

²⁸ Nippon Express (Philippines) Corp. vs. CIR, G.R. No. 185666, February 4, 2015.



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jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.²⁹ The thirty (30)-day period within which to file an appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction.³⁰

All told, the Court *En Banc* finds no reason to modify or reverse the assailed Decision and assailed Resolution of the Court in Division.


WHEREFORE, premises considered, the present **Petition for Review *En Banc*** filed by petitioner Larry E. Segaya/LES Engineering and Construction is hereby **DENIED** for lack of merit. The Decision dated February 26, 2021 and Resolution dated July 14, 2021 rendered by the Court's Second Division in CTA Case No. 9875 are **AFFIRMED**.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

²⁹ CIR vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.

³⁰ Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006.

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CATHERINE T. MANAHAN

Associate Justice



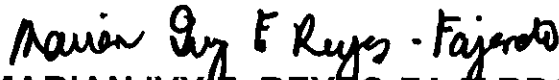
JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

Associate Justice



CORAZON G. FERRER-FLORES

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