



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 19, 2022 which reads as follows:

“G.R. No. 258101 (*Nueva Ecija II Electric Cooperative, Inc. Area II (NEECO II Area II) v. Commissioner of Internal Revenue*).— This Court resolves to **DENY** the instant *Petition for Review on Certiorari* and **AFFIRM** the assailed *Resolutions* dated 10 March 2021¹ and 28 October 2021² of the Court of Tax Appeals *En Banc* (CTA *EB*) in CTA EB No. 2319 for failure of petitioner Nueva Ecija II Electric Cooperative, Inc. Area II (petitioner) to show that the CTA *EB* committed any reversible error in affirming the dismissal of the *Petition* before the CTA First Division for lack of jurisdiction.

As correctly ruled by the CTA *EB*, Section 228³ 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

- over – three (3) pages ...

93-A

¹ Signed by Court of Tax Appeals Associate Justices Juanito C. Castañeda Jr., Erlina P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro. Presiding Justice Roman G. Del Rosario on leave; *Rollo*, pp. 83-88.

² Signed by Court of Tax Appeals Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda Jr., Erlina P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, and Marian Ivy F. Reyes-Fajardo; *Rollo*, pp. 90-97.

³ 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:

xxxx

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.

2016. Perforce, the statutory 180-day period lapsed on 18 March 2017. From such point, petitioner had thirty (30) days, or until 17 April 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 3.1.4⁴ 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),⁵ 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.⁶ "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."⁷

All told, the *Petition* must be denied.

With the denial of the instant *Petition for Review on Certiorari*, petitioner's concurrent application for the issuance of a temporary restraining order and/or writ of preliminary injunction is necessarily **DENIED**.

- over -

93-A

⁴ 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:

xxxx

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.

xxxx

⁵ See *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019.


⁶ See *Philippine Amusement and Gaming Corp. v. Bureau of Internal Revenue*, 779 PHIL 547-562 (27 January 2016).

⁷ *Misnet, Inc. v. Commissioner of Internal Revenue*, G.R. No. 210604, 3 June 2019.

The petitioner's manifestation dated 9 December 2021 stating that a soft copy of the motion for extension was electronically filed on 8 December 2021, with attached verified declaration of the said motion, is **NOTED**.

SO ORDERED.” *Gaerlan, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *at 11*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
93-A

ROVERO TAMAYO & PARTNERS
Counsel for Petitioner
Unit H, 2nd Floor, Dearjohn II Building
27 President's Avenue, Barangay BF
1720 Parañaque City

Court of Tax Appeals
National Government Center
Diliman, 1101 Quezon City
(CTA EB No. 2319)
(CTA Case No. 9605)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Commissioner
BUREAU OF INTERNAL REVENUE
Litigation Division
Room 703, BIR National Office Building
Agham Road, Diliman
1101 Quezon City

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Philippine Judicial Academy (x)
Supreme Court

Judgment Division (x)
Supreme Court

UR

NTF