REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NUEVA ECIJA I ELECTRIC COOPERATIVE, INC.,
Petitioner,

CTA EB No. 2930
(CTA Case No. 10587 & 10632)

-versus-

COMMISSIONER OF INTERNAL REVENUE and REGIONAL DIRECTOR OF REVENUE REGION NO. 4 CITY OF SAN FERNANDO, PAMPANGA OF THE BUREAU OF INTERNAL REVENUE,
Respondents.

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2931
(CTA Case No. 10587 & 10632)

Present:

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

-versus-

NUEVA ECIJA I ELECTRIC COOPERATIVE, INC.,
Respondent.

Promulgated:
MAY 2 1 2026 4:16 p.m.

x- x

DECISION

ANGELES, *J.*:

Before the Court *En Banc* are the following consolidated cases:

(1) *Petition for Review*[1] filed on June 11, 2024 by Nueva Ecija I Electric Cooperative, Inc. (NEECO1) against the Commissioner of Internal Revenue (CIR) and Regional Director (RD) of Revenue Region No. 4, City of San Fernando, Pampanga (collectively referred to as the Bureau of Internal Revenue or BIR), docketed as CTA EB No. 2930; and

(2) *Petition for Review*[2] filed on July 1, 2024 by the CIR against petitioner, docketed as CTA EB No. 2931.

Both Petitions for Review seek to appeal the *Decision*[3] dated November 13, 2023 (assailed Decision) and *Resolution*[4] dated May 27, 2024 (assailed Resolution) promulgated by the Special First Division (Court in Division) in CTA Case Nos. 10587 & 10632, entitled "*Nueva Ecija I Electric Cooperative, Inc. v. Commissioner of Internal Revenue and Regional Director Joseph M. Catapia, in his capacity as the Regional Director of Revenue Region No. 4, City of San Fernando Pampanga of the Bureau of Internal Revenue.*"

FACTS

The Court in Division narrated the facts as follows:

> [NEECO1] is a non-stock non-profit electric cooperative duly organized by virtue of Presidential Decree (PD) No. 269, otherwise known as "The National Electrification Administration (NEA) Decree" xxx xxx xxx It holds a Certificate of Franchise issued by NEA on January 22, 1990 permitting it to operate an electric light and power service, as a distribution facility, in the Municipalities of Cabiao, Jaen, San Antonio, and San Isidro, and the City of Gapan, all in the Province of Nueva Ecija.
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> [CIR] is vested under pertinent laws with the authority to carry out the functions, powers, duties and responsibilities, including, among others, the power to decide disputed assessments, cancel and abate tax liabilities, and other matters, including directing to distrain and/or levy a taxpayer's properties pursuant to and in accordance with the National Internal Revenue Code (NIRC) of 1997, as amended, and other applicable tax laws.
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> [RD] CATAPIA xxx xxx xxx is the head of the government agency falling under the control and supervision of the CIR which is involved in collecting all national internal revenue taxes and other matters

[1] *En Banc* (EB) No. 2930 Docket, pp. 1-26, with attachments.
[2] EB No. 2931 Docket, pp. 7-56, with attachments.
[3] *Id.*, pp. 63-97.
[4] *Id.*, pp. 99-106.

including the power to levy and distrain taxpayer's properties under Revenue Region No. 4.

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TY 2012 Assessment
(CTA Case No. 10632)

On February 5, 2015, Letter of Authority (LOA) No. 23B-2015-00000001 (SN: eLA201000058923) was issued against petitioner by the OIC-Regional Director, Revenue Region No. 4, authorizing **Revenue Officer (RO) Felicitas Agustin** and **Group Supervisor (GS) Rey Lugtu** to examine the books of accounts and accounting records of petitioner for all internal revenue taxes for the period January 1 to December 31, 2012.

On December 11, 2015, petitioner's general manager executed a Waiver of the Defense of Prescription in relation to respondents' examination until December 31, 2016, which was accepted by the Revenue District Officer.

In an undated Memorandum addressed to the Regional Director, Revenue Region No. 4, **RO Agustin and GS Lugtu** recommended the issuance of a Preliminary Assessment Notice (PAN) against petitioner, finding it liable for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), fringe benefits tax (FBT), and compromise penalties for TY 2012. In another undated Memorandum, **RO Agustin and GS Lugtu** again reiterated their recommendation for the issuance of a PAN against petitioner after conducting a reexamination of the documents the latter presented.

On June 21, 2016, a PAN with Details of Discrepancies was issued against petitioner, finding it liable for deficiency income tax, VAT, EWT and compromise penalties for TY 2012. Petitioner received the PAN on July 5, 2016, and filed its Reply thereto on July 19, 2016.

A Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices was issued against petitioner on July 25, 2016, ordering it to pay the amounts of ₱37,803,735.12, ₱81,765,002.95, ₱26,614,444.17, and ₱50,000.00, representing deficiency income tax, VAT, EWT, and compromise penalties, respectively, inclusive of surcharge and interest. The FLD and its attachments were received by petitioner on August 9, 2016.

On August 18, 2016, petitioner filed its Protest to the FLD dated August 17, 2016, requesting for reinvestigation of the assessment.

On January 16, 2017, petitioner received the Final Decision on Disputed Assessment (FDDA) dated December 27, 2016 rendered by the OIC-Regional Director, finding petitioner liable for deficiency income tax in the total amount of ₱39,387,637.84, inclusive of surcharge and interest.

Petitioner sent via registered mail on February 14, 2017 a request for reconsideration of the FDDA addressed to respondent CIR.

On May 5, 2017, a Preliminary Collection Letter (PCL) was issued against petitioner. Thereafter, a Final Notice Before Seizure (FNBS) was issued on May 19, 2017.

Because the demands for payment of deficiency income tax were left unheeded, respondent CIR, through the Regional Director, issued the assailed WDL No. 2021-RR4-AMS-000100, which petitioner received on July 27, 2021.

On August 4, 2021, petitioner sent a Letter with respondent CIR requesting for the status of its request for reconsideration of the FDDA considering that a WDL was already issued by the Regional Director. Respondent, however, failed to reply.

Thus, petitioner filed via registered mail a Petition for Review on September 13, 2021, which was docketed as **CTA Case No. 10632**. The case was raffled to the Court's Second Division.

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TY 2013 Assessment (CTA Case No. 10587)

On February 5, 2015, LOA No. 23B-2015-00000002 (SN eLA201000058922) was issued against petitioner by Conrado C. Lee, OIC-Regional Director, Revenue Region No. 4, authorizing **RO Jessie Lumba, Jr.** and **GS Lope Tubera** to examine the books of accounts and accounting records of petitioner for all internal revenue taxes for the period January 1 to December 31, 2013.

On July 28, 2015, the OIC-Revenue District Officer issued a Memorandum of Assignment (MOA) designating **RO Noreen Santos** and GS Tubera to continue the audit of petitioner for any internal revenue taxes for TY 2013.

In an undated Memorandum likewise addressed to the Regional Director, **RO Santos** and **GS Lugtu** recommended the issuance of a PAN against petitioner, finding it liable for deficiency income tax and EWT for TY 2013.

On September 7, 2016. petitioner received a PAN dated August 30, 2016 with Details of Discrepancies, finding it liable to pay deficiency income tax, EWT and compromise penalties for TY 2013. Petitioner filed its Reply to the PAN on September 21, 2016.

Petitioner, through its General Manager, executed a Waiver of the Defense of Prescription on September 22, 2016, extending the examination of its books of accounts and accounting records until December 13, 2017.

On October 13, 2016, petitioner received an FLD dated September 23, 2016 with Details of Discrepancies and ANs finding it liable to pay deficiency income tax, EWT and compromise penalties in the total amounts of ₱39,987,099.24, ₱24,047,118.10, and ₱50,000.00, respectively, inclusive of surcharge and interest.

On November 3, 2016, petitioner filed its protest to the FLD requesting for reinvestigation of the assessment.

Petitioner received the FDDA on January 31, 2017 rendered by the OIC-Regional Director, which found the former liable for deficiency income tax of ₱41,510,417.30, inclusive of surcharge and interest.

On March 2, 2017, petitioner filed with respondent CIR a request for reconsideration of the FDDA.

Thereafter, a PCL was issued against petitioner on May 4, 2017.

On June 18, 2021, petitioner received the assailed WDL No 2021-RR-004-AMS-000090 dated June 3, 2021.

Petitioner sent a Letter dated July 2, 2021 addressed to respondent CIR requesting for status of its request for reconsideration of the FDDA.

Unable to receive a reply to its afore-stated Letter, petitioner then filed a Petition for Review on July 14, 2021, which was docketed as **CTA Case No. 10587.** The case was raffled to the Court's First Division.[5]

PROCEEDINGS BEFORE THE COURT

In **CTA Case No. 10632**, after the filing of the Petition for Review with the Court in Division, or on October 26, 2021, several Warrants of Garnishment (WOGs) were issued to various banks to garnish the deposit accounts of NEECO1.

NEECO1 filed on November 5, 2021 an Urgent Verified Motion for the Suspension of the Collection of Tax Liability, praying for the suspension of collection of taxes enforced against it by the BIR.

On November 15, 2021, NEECO1 filed an Urgent Motion for Consolidation, which the Court in Division granted in a Resolution dated December 6, 2021.

Summonses were served on the BIR and the Office of the Solicitor General (OSG) on November 17, 2021. The BIR then filed its Answer on January 28, 2022.

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[5] EB No. 2930 Docket, pp. 38-43.

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Meanwhile, in **CTA Case No. 10587**, summonses were served on NEECO1 and the OSG on September 8, 2021 and September 13, 2021, respectively. NEECO1 then filed its Answer on October 26, 2021.

NEECO1 likewise filed on November 5, 2021 an Urgent Verified Motion for the Suspension of the Collection of Tax Liability, again praying for the suspension of collection of taxes enforced against it.

NEECO1 also filed on November 15, 2021 an Urgent Motion for Consolidation.

The BIR thereafter filed its Comment and Opposition to NEECO1's Urgent Verified Motion on December 6, 2021.

On December 9, 2021, the Court in Division conducted a hearing via videoconference on NEECO1's Urgent Verified Motion and Urgent Motion for Consolidation. The Court in Division granted the latter motion, directed the parties to appear before the Philippine Mediation Center (PMC-CTA) on January 2, 2022, and set the Pre-Trial Conference on May 19, 2022.

The proceedings for the consolidated cases continued, *viz.*:

> On December 16, 2021, petitioner filed its Formal Offer of Evidence (In Support of the Urgent Verified Motions for the Suspension of the Collection of Tax Liability), for which respondent filed his Comment (Re: Formal Offer of Evidence dated 16 December 2021) on December 17, 2021.
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> The parties decided not to have the cases mediated by the PMC-CTA per the No Agreement to Mediate dated February 4, 2022, which the Court noted in a Resolution dated March 14, 2022.
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> On March 1, 2022, petitioner filed a Reply (To the Answer dated 15 January 2022), for which respondents filed an Opposition (To Reply dated 01 March 2022) on March 22, 2022.
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> In a Resolution dated April 19, 2022, the Court resolved to:
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> (1) Admit all of petitioner's offered exhibits;
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> (2) Grant petitioner's Urgent Verified Motion for the Suspension of the Collection of Tax Liability for **CTA Case No. 10587**, subject to the posting of surety bond in the amount of **₱22,849,770.99**;
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> xxx xxx xxx

Petitioner and respondents filed their respective Pre-Trial Briefs on June 3, 2022.

The Pre-Trial Conference was held on June 9, 2022.

On June 13, 2022, respondents filed their Compliance, elevating the BIR Records for the consolidated cases, which the Court noted in a Minute Resolution dated June 16, 2022.

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In a Resolution dated July 1, 2022, the Court resolved to:

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> (3) Grant petitioner's Urgent Verified Motion for the Suspension of the Collection of Tax Liability for **CTA Case No. 10632**, subject to the posting of surety bond in the amount of **₱20,077,353.90**, which must likewise be a compliant continuing bond.

The parties filed their Joint Stipulation of Facts and Issues on July 11, 2022.

On July 29, 2022, the Court issued a Resolution which denied the parties' Urgent Motion for Extension of Time to File Joint Stipulation of Facts and Issues, but nevertheless admitted and approved the submitted Joint Stipulation of Facts and Issues in the interest of justice; terminated the pre-trial xxx xxx xxx

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On September 13, 2022, the Pre-Trial Order was issued.

Trial of the consolidated cases ensued. Petitioner presented both documentary and testimonial evidence xxx xxx xxx

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Petitioner filed its Formal Offer of Evidence on September 12, 2022, to which respondents filed on September 19, 2022 their Comment (Re: Petitioner's Formal Offer of Evidence).

In a Resolution dated November 17, 2022, the Court admitted all of petitioner's exhibits, subject to the final evaluation and appreciation of their probative value.

On the other hand, respondents likewise presented both documentary and testimonial evidence xxx xxx xxx

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Respondents filed their Formal Offer of Evidence on February 14, 2023, to which petitioner filed on February 27, 2023 its Comment and/or Objection (to the Respondent's Formal Offer of Evidence).

In a Resolution dated April 5, 2023, the Court admitted all of respondents' exhibits, subject to final evaluation and appreciation of their probative value. The Court likewise ordered the submission of the parties' respective memoranda within thirty (30) days from notice.

Respondents filed a Manifestation on May 15, 2023, stating that they are adopting the arguments raised in the Answers filed before the Court as their memorandum.

Meanwhile, petitioner filed its Memorandum on May 18, 2023.

In a Minute Resolution dated May 23, 2023, the Court noted respondents' Manifestation and petitioner's Memorandum, and submitted the case for decision.[6]

The assailed Decision was promulgated on November 13, 2023, resolving the consolidated cases in favor of NEECO1, to wit:

> **WHEREFORE,** premises considered, the Petitions for Review in **CTA Case Nos. 10587** and **10632** are both **GRANTED.** Assessment No. 23B-R301004687 and its resulting Warrant of Distraint and/or Levy No. 2021-RR4-AMS-000100 covering taxable year 2012, and Assessment No. 23B-14-04-011879 and its resulting Warrant of Distraint and/or Levy No. 2021-RR-004-AMS-000090 covering taxable year 2013, are all **CANCELLED** and **SET ASIDE.**
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> The Resolutions dated April 19, 2022 and July 1, 2022 ordering the suspension of the collection of taxes against petitioner are hereby **MADE PERMANENT.** Accordingly, the Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency income tax assessments against petitioner for taxable years 2012 and 2013. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court, as amended.
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> **SO ORDERED.**[7]

NEECO1 posted on December 1, 2023 a Motion for Partial Reconsideration (of the Decision Dated 14 November 2023) with Motion for Supplemental Relief,[8] to which the BIR filed on January 15, 2024 a Comment and Opposition.[9]

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[6] EB No. 2930 Docket, pp. 43-48.
[7] EB No. 2931 Docket, p. 70.
[8] Case No. 10587 Docket, pp. 1697-1717.
[9] Case No. 10587 Docket, pp. 1777-1789.

The BIR likewise filed on December 5, 2023 a Motion for Reconsideration (Re: Decision dated November 13, 2023),[10] to which NEECO1 filed on January 9, 2024 a Comment/Opposition.[11]

In the assailed Resolution promulgated on May 27, 2024, the Court in Division denied the parties' respective Motions for Reconsideration for lack of merit.

Hence, the present appeals.

The Petition for Review for **CTA EB No. 2930** was filed with the Court *En Banc* by NEECO1 on June 11, 2024, without any comment from the BIR.[12]

The Petition for Review for **CTA EB No. 2931** was likewise filed with this Court by the CIR on July 1, 2024, after being granted an extension of time.[13] NEECO1's Comment/Opposition[14] thereto was posted on July 29, 2024.

Thereafter, the case was submitted for decision on October 10, 2024.[15]

<u>ISSUES</u>

NEECO1 raises the following issue in **CTA EB No. 2930**:

WHETHER OR NOT THE *COURT A QUO'S* DECISION LIMITING THE PERMANENT EXEMPTION OF ELECTRIC COOPERATIVES IS VALID.[16]

It also assigns the following errors:

I.

SECTION 39 OF [PRESIDENTIAL DECREE (PD) NO.] 269, AS AMENDED, CLEARLY AND PLAINLY GRANTS [NATIONAL ELECTRIFICATION ADMINISTRATION (NEA)] COOPERATIVES PERMANENT EXEMPTION FROM INCOME TAX. THE CONCLUSION OF THE *COURT*

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[10] Case No. 10587 Docket, pp. 1661-1695.
[11] Case No. 10587 Docket, pp. 1743-1773.
[12] *Records Verification* dated September 10, 2024, EB No. 2930 Docket, p. 926.
[13] *Resolution* dated June 21, 2024, EB No. 2931 Docket, p. 6.
[14] EB No. 2930 Docket, pp. 718-763.
[15] EB No. 2930 Docket, p. 927.
[16] EB No. 2930 Docket, pp. 6-7.

A QUO IN THE SUBJECT DECISION AND SUBJECT RESOLUTION IS CONTRARY TO THE PLAIN LANGUAGE OF PD NO. 269, AS AMENDED.

II.

THE *COURT A QUO'S* CONCLUSION IN THE SUBJECT DECISION AND SUBJECT RESOLUTION IS CONTRARY TO THE INTENT OF OUR LEGISLATORS.

III.

THE *COURT A QUO'S* CONCLUSION IN THE SUBJECT DECISION AND SUBJECT RESOLUTION CONTRAVENE THE CONSTITUTIONALLY ENSHRINED POLICY OF THE STATE DIRECTING CONGRESS TO PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES AS INSTRUMENTS FOR SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT.

IV.

THE IMPLEMENTATION OF THE SUBJECT DECISION AND SUBJECT RESOLUTION WILL RESULT IN A VIOLATION OF THE PRINCIPLE OF ADMINISTRATIVE FEASIBILITY OF TAXATION.

V.

RECORDS AND EVIDENCE SHOW THAT NEECO1 CONTINUES TO BE A NEA COOPERATIVE IN GOOD STANDING. THE *COURT A QUO* GRAVELY ERRED IN CITING SECTION 32-A OF PD 269 AS BASIS TO REQUIRE NEECO1 TO PRESENT EVIDENCE ON ITS FINANCIAL AND OPERATIONAL STANDARDS TO BE GRANTED PERMANENT EXEMPTION.[17]

On the other hand, the CIR assigns the following errors in **CTA EB No. 2931**:

I.

THE HONORABLE COURT IN DIVISION COMMITTED AN ERROR IN ASSUMING JURISDICTION OVER THE ASSESSMENTS WHICH HAD ALREADY ATTAINED THE STATUS OF FINALITY AND EXECUTORY, THEREBY RENDERING IT BEYOND THE REACH OF FURTHER JUDICIAL REVIEW OR MODIFICATION.

II.

WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED WHEN IT GRANTED RESPONDENT'S

[17] EB No. 2930 Docket, pp.6-7.

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PETITIONS FOR REVIEW AND CANCELLED AND SET ASIDE THE DEFICIENCY INCOME TAX ASSESSMENTS ISSUED BY PETITIONER FOR THE TAXABLE YEARS 2012 AND 2013.

III.

PETITIONER'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED WHEN THE HONORABLE COURT IN DIVISION CONSIDERED AN ALLEGATION THAT WAS NEVER RAISED IN RESPONDENT'S PETITIONS.[18]

ARGUMENTS OF THE PARTIES

CTA EB No. 2930

NEECO1 argues that *first*, Section 39 of PD No. 269, as amended, clearly provides for the permanent exemption of NEA cooperatives. It explains that the Fiscal Incentives Review Board (FIRB) Resolution No. 24-87 was passed by the FIRB on July 14, 1987, during the time of the transitional government of President Corazon Aquino. But with the creation of the Philippine Congress, the power to determine the fiscal incentives of NEA cooperatives was shifted to Congress. Thus, when Congress enacted Republic Act (RA) No. 10531, otherwise known as the NEA Reform Act, in July 2012, they did not adopt nor incorporate the conditions stated in FIRB Resolution No. 24-87. NEECO1 asserts that if it was the legislative intent to retain the conditions under the said FIRB Resolution, then Congress could have incorporated the same into, or amended Section 39 of PD No. 269 when it enacted the NEA Reform Act.

NEECO1 further states that pursuant to the principle of legislative approval of administrative interpretation by reenactment, Congress has already rejected the conditions under the said FIRB Resolution, while the permanent exemption of electric cooperatives under Section 39 of PD No. 269 remains.

Second, NEECO1 argues that it is clear from the provisions of the NEA Reform Act that Congress did not amend Section 39 of PD No. 269, and the legislative intent to retain the income tax exemption of NEA cooperatives under the latter provision may be culled from the records of the Congress' deliberations on the NEA Reform Act, the Cooperative Development Authority (CDA) Law, and the Department of Finance Joint Rules and Regulations dated February 5, 2010.

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[18] EB No. 2930 Docket, pp.17-18.

Third, NEECO1 argues that the adoption of the conditions under FIRB Resolution No. 24-87 will contravene the letter and spirit of the constitutionally enshrined principle to promote the viability and growth of all cooperatives as instruments for social justice and economic development. NEECO1 adds that imposing a tax on the collections made from electric service operations will hamper, instead of promote, the operations of NEA cooperatives, which do not operate for profit.

Furthermore, NEECO1 states that it is evident from Section 30 of the National Internal Revenue Code (Tax Code) that it is the policy of the State to exempt from income tax organizations which are "not xxx principally for profit," "for mutual purposes and without profit," and "for the exclusive benefit of the members." NEECO1 points out that it is a non-stock non-profit entity primarily organized for the mutual benefits of its members-consumer-owners.

Fourth, NEECO1 argues that the implementation of the assailed Decision and Resolution will result in a violation of the principle of administrative feasibility of taxation. It alleges that it will be unreasonable to require NEECO1 to declare income that it does not generate, and it will be impossible for the government to impose income tax on a taxpayer that does not operate for profit. Effectively, it will be the member-consumer-owners who will suffer from the consequences such Decision and Resolution.

Lastly, NEECO1 argues that the requirements provided under Section 32-A of PD No. 269 for prior compliance with the financial and operational standards set by the NEA should be confined to the incentives enumerated under the said provision. As such, it was unnecessary for the Court *a quo* to require NEECO1 to present evidence to prove such compliance. NEECO1 submits that NEECO1 remains to be registered in good standing with the NEA.

CTA EB No. 2931

Contrarily, the CIR argues that the Court *a quo* erred in assuming jurisdiction over the original Petitions for Review. The CIR highlights that instead of appealing the Final Decision on Disputed Assessment (FDDA) before the CTA, NEECO1 filed a request for reconsideration on February 14, 2017. The CIR points out that NEECO1 only had thirty (30) days from its receipt of the FDDA within which to file its Petition for Review before the CTA. However, when NEECO1 filed its Petition for Review in August 2021, more than four (4) years had already passed since its receipt of the FDDA. Hence, the said Petition was filed out of time.

The CIR further contends that NEECO1 is not exempt from paying income taxes and is liable for deficiency income tax for taxable years (TYs) 2012 and 2013. He maintains that jurisprudence has recognized the validity of FIRB Resolution No. 24-87, that it has been declared as a valid delegation of legislative power, and because of which, electric cooperatives established under PD No. 269 are entitled to tax exemption privileges subject to the conditions under the said Resolution. Consequently, NEECO1's income from its electric service operations is subject to income tax as its tax exemption ended in the year 2003, or thirty (3) years after its incorporation.

Moreover, the CIR contends that the Revenue Officers (ROs) for TY 2013 were duly authorized to conduct the tax audit of NEECO1, as they were issued a Memorandum of Assignment (MOA) pursuant to a valid Letter of Authority (LOA). Relatedly, the CIR argues that NEECO1 has always been accorded due process from the commencement of the audit proceedings to the Decision denying its protest, as it was duly informed of the factual and legal bases for the subject assessments, and was afforded all opportunities to be heard.

Finally, the CIR argues that his basic right to fair play and due process was violated when the Court *a quo* considered an issue that was never raised in NEECO1's Petitions, nor by either party during the proceedings.

By way of Comment, NEECO1 principally argues that the CIR's Petition for Review should be dismissed pursuant to Section 7, Rule 43 of the Rules of Court, as such Petition was not served on the Court a quo and was not accompanied by material portions of the record.

NEECO1 also argues that the Court *a quo* correctly acquired jurisdiction over its Petitions for Review due to the timely filing of such Petitions with the CTA.

It further argues that the ROs who conducted the audit for TY 2013 were not clothed with proper authority; the CIR failed to consider any of its arguments raised in its Reply to the PAN and protest to the FAN for TY 2012 and 2013, thereby violating its due process rights; the CTA has authority to consider the issue of authority of the ROs to conduct the tax audit of NEECO1; and NEECO1 is permanently exempt from paying income taxes.

RULING OF THE COURT *EN BANC*

After a painstaking review of the records of the case, We find the instant Petitions for Review **insufficient** to warrant a reversal of the assailed Decision and Resolution of the Court *a quo*.

Jurisdiction of the Court En Banc over the instant Petitions for Review

With respect to **CTA EB No. 2930**, records of the case show that NEECO1, through counsel, received a copy of the assailed Resolution on May 29, 2024.[19] Pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[20] NEECO1 had fifteen (15) days from such receipt, or until June 13, 2024, to file a Petition for Review before the Court *En Banc*. Since NEECO1 filed its Petition for Review on June 11, 2024,[21] the same was timely filed.

As for **CTA EB No. 2931**, it appears that a copy of the assailed Resolution was received by the BIR on May 31, 2024, and by the OSG on May 30, 2024.[22]

Jurisprudence has long recognized the OSG as the proper representative of the CIR in appellate proceedings.[23] This is because it is the OSG who has the primary responsibility of appearing for the government in appellate proceedings.[24] While the OSG is allowed to deputize legal officers of government departments, bureaus, and agencies to represent the government in cases involving their respective offices brought before the courts, such deputized legal officers remain under the supervision and control of the OSG.[25]

Accordingly, copies of orders, notices, and decisions served on the deputized counsel, acting as agent or representative of the OSG, are insufficient and not binding until they are actually received by the latter. The proper basis, therefore, for computing the reglementary period to file an appeal and for determining whether a decision had

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[19] Case No. 10587 Docket, p. 1828.
[20] A.M. No. 05-11-07-CTA, November 22, 2005, as amended.
[21] EB No. 2930 Docket, p. 1.
[22] *Supra*, note 20.
[23] *LG Electronics Philippines, Inc v. Commissioner of Internal Revenue*, G.R. No. 165451, December 3, 2014.
[24] *Commissioner of Internal Revenue v. La Suerte Cigar & Cigarette Factory*, G.R. No. 144942, July 4, 2002.
[25] Section 35, Executive Order No. 292, July 25, 1987.

attained finality is service on the OSG, and not service on the deputized counsel.[26]

Moreover, the deputized counsel has no legal authority to decide whether or not an appeal should be made.[27]

In this case, as the OSG received a copy of the assailed Resolution on May 30, 2024, it had fifteen (15) days therefrom, or until June 14, 2024, to file a Petition for Review before Us. Pertinently, the CIR, through BIR Special Counsels, filed a Motion for Extension to File Petition for Review[28] on June 13, 2024. The said Motion was granted by the Court, giving the CIR an additional period of fifteen (15) days from June 15, 2024, or until June 30, 2024, within which to file its Petition for Review, subject to the condition that the said Motion was filed on time.[29]

This Court notes that June 30, 2024 fell on a Sunday. Thus, the CIR, through BIR Special Counsels, filed his Petition for Review on July 1, 2024.[30]

Although the said Petition appears to have been timely filed with this Court, records show that the BIR Special Counsels who signed the same had no authority to institute the present appeal. Records of the case are bereft of any evidence that would prove that the BIR Special Counsels were duly authorized by the OSG to file the said Petition.

It must be emphasized that based on the above-cited rules and jurisprudence, the BIR Legal Division, through its Special Counsels, is not the proper party to represent the CIR in appellate proceedings, such as the present case. It is the OSG who is the proper party to represent the interest of the government in appellate proceedings.

There being no document or other evidence on record showing the BIR Special Counsels' deputation from the OSG, the CIR's statutory counsel, to appear and represent the CIR before this Court, We find the said BIR lawyers to have had no legal authority to file the instant Petition.

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[26] *National Power Corp. v. National Labor Relations Commission*, G.R. Nos. 90933-61, May 29, 1997.
[27] *Id.*
[28] EB No. 2931 Docket, p. 1.
[29] *Supra*, note 13.
[30] EB No. 2931 Docket, p. 7.

Let it be stated that when a petition suffers from the basic infirmity of lack of the requisite imprimatur from the OSG, it is dismissible on that ground.[31] Furthermore, the right to appeal is a statutory privilege and may be exercised only in accordance with the provisions of law.[32] The perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional, and failure to perfect an appeal in such manner renders the judgment appealed from final and executory.[33]

As the CIR failed to file the instant Petition in accordance with prevailing rules and jurisprudence, particularly with proper representation from the OSG, this Court is constrained to treat the said Petition as not validly filed. Consequently, this Court has no other recourse but to dismiss the said Petition for lack of jurisdiction.

But even if this Court were to gloss over the foregoing fatal defect, the Petition for Review in CTA EB No. 2931, must still be denied for lack of merit.

Jurisdiction of the Court in Division over CTA Case No. 10632

In the assailed Decision, the Court *a quo* found that: **(1)** the FDDA was issued by the OIC-RD of Revenue Region No. 4 and received by NEECO1 on January 16, 2017; **(2)** within thirty (30) days from such receipt, or on February 14, 2017, NEECO1 filed via registered mail a request for reconsideration addressed to the CIR; and **(3)** the Preliminary Collection Letter (PCL), Final Notice Before Seizure (FNBS), and Warrant of Distraint and/or Levy (WDL) were issued without a decision by the CIR on the said request.

Considering the foregoing findings, the Court *a quo* held that since the CIR did not yet act on NEECO1's administrative appeal of the FDDA, the subject assessment covering TY 2012 may not be considered final, executory and demandable; thus, the collection of the alleged income tax deficiency was premature.

The Court also held that NEECO1 genuinely chose to wait for the decision of the CIR. Citing the rulings of the Supreme Court in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue* (PJI case)[34] and *Light Rail Transit Authority v. Bureau of Internal Revenue*

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[31] *Republic v. "G" Holdings Inc.*, G.R. No. 141241, November 22, 2005.
[32] *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005.
[33] *Mitsubishi Motors Phils. Corp. v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[34] G.R. No. 162852, December 16, 2004.

(LRTA case),[35] the Court *a quo* therefore ruled that the 30-day period to appeal to the CTA should not be counted from NEECO1's receipt of the FDDA or PCL, but instead, from the WDL to protect its interest from the premature collection of its properties.

The CIR now argues that based on the Tax Code, Revenue Regulations (RR) No. 18-2013, and the RRCTA,[36] there is only one (1) "180 days" within which the CIR and his duly authorized representative shall decide the protest, and such period shall be reckoned from the date of submission of documents, or from the date the protest was filed. In case of inaction by the CIR on the administrative appeal, the CIR is given only the remaining days of the same 180-day period to decide such appeal. If the CIR failed to act within the given period, such failure shall be considered a denial of the protest, and taxpayers may either, *one*, appeal to the CTA within thirty (30) days from the lapse of the same 180-day period; or, *two*, await the decision of the CIR even beyond the 180-day period, and appeal such decision to the CTA within thirty (30) days from receipt of the same.

The CIR points out that: **(1)** NEECO1 filed its protest to the FLD on August 17, 2016; **(2)** after receiving the FDDA on January 16, 2017, instead of appealing the same to the CTA, NEECO1 opted to seek reconsideration with the CIR by filing a request for reconsideration on February 14, 2017; and **(3)** NEECO1 filed its Petition for Review covering TY 2012 in August 2021, or more than four (4) years since its receipt of the FDDA. Hence, the CIR submits that the said Petition was filed out of time.

He also argues that the issuance of the WDL was not the first time that he actively pursued the collection of deficiency taxes. He already proceeded with his collection efforts when the PCL and FNBS were issued. Thus, when the PCL was issued, it was already clear that the CIR denied NEECO1's request for reconsideration. It is the PCL that is the final decision on NEECO1's request for reconsideration appealable to the CTA, not the WDL. The CIR therefore claims that NEECO1 erred when it counted the 30-day period within which to appeal to the CTA, from its receipt of the WDL. As such, the subject assessments have become final, executory, and demandable.

On the other hand, NEECO1 counters that the subject FDDA expressly provided the remedy of appealing the same to the CIR through a request for reconsideration within thirty (30) days from receipt. Consistent therewith, NEECO1 timely filed a request for reconsideration of the subject FDDA with the CIR. Instead of filing an

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[35] G.R. No. 231238, June 20, 2022.
[36] *Supra*, note 20.

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appeal with the CTA after the lapse of the 180-day period, counted from the filing of the protest, NEECO1 opted to wait for the decision of the CIR.

NEECO1 maintains that the issuance of the PCL and FNBS did not constitute a denial of its request for reconsideration, as they were merely issued by the RD of Revenue Region No. 4 and not by the CIR. NEECO1 nonetheless filed a letter informing the RD that it timely filed a request for reconsideration with the CIR. Furthermore, NEECO1 alleges that the 2012 PCL and FNBS did not categorically state that its tax liabilities were already classified as "delinquent," nor did they reference the request for reconsideration filed with the CIR, nor did they indicate the express final denial by the CIR.

NEECO1 adds that it exhausted all remedies against the 2012 WDL by filing with the CIR an Urgent Request for Status of the Request for Reconsideration. While the CIR did not directly respond to its Urgent Request, NEECO1 allegedly received a letter from Atty. Hayle F. Bonilla, the Chief of the Appellate Division of the CIR, informing it of the receipt of its Urgent Request, and that such Request was still pending resolution.

We affirm the ruling of the Court *a quo* on this matter. The Petition for Review in **CTA Case No. 10632** was timely filed.

It is clear from Section 3.1.4 of RR No. 12-99,[37] as amended by RR No. 18-13,[38] that if the protest against the FLD/FAN is wholly or partially denied by the CIR's duly authorized representative in the FDDA, the taxpayer may, within thirty (30) days from receipt of the FDDA, either file an appeal with the CTA **(judicial appeal)** <u>or</u> file a request for reconsideration with the CIR **(administrative appeal)**.

If the **administrative appeal** is thereafter not acted upon by the CIR within one hundred eighty (180) days from the date of filing of the protest, the taxpayer may either file an appeal with CTA within thirty (30) days from the expiration of the 180-day period **(judicial appeal from the inaction of the CIR)** <u>or</u> await the final decision of the CIR on the disputed assessment and appeal such final decision to the CTA within thirty (30) days from receipt such decision **(judicial appeal from the final decision of the CIR)**.[39]

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[37] 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, September 6, 1999.
[38] Amending Certain Sections of Revenue Regulations No. 12-99, November 28, 2013.
[39] *Supra*, note 38.

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These options were recognized in the LRTA case,[40] citing *Rizal Commercial Banking Corp. v. Commissioner of Internal Revenue*[41] and *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*.[42]

In the LRTA case,[43] it was the RD who issued the FDDA denying the petitioner's protest to the FAN. The petitioner appealed the FDDA to the CIR. Pending the resolution of the petitioner's administrative appeal with the CIR, the OIC-Revenue District Officer (RDO) of Revenue Region No. 8 issued a PCL. While the petitioner informed the RD that it had filed an appeal with the CIR, the RDO still proceeded to issue a FNBS, to which the petitioner replied through a letter reiterating that its appeal was still pending with the CIR. Thereafter, the RDO still proceeded to issue a WDL against the petitioner, which prompted several more letters from both the petitioner and the RDO. Eventually, in a June 30, 2014 Letter, the RD acted on the petitioner's appeal to the CIR, declaring the case final, executory, and demandable due to failure to submit the required documents. The petitioner received the said Letter on August 12, 2014. Within thirty (30) days from such receipt, the petitioner filed the Petition for Review before the CTA.[44]

In resolving the issue of whether the FDDA was the final decision of the CIR appealable to the CTA, for purposes of determining the timeliness of filing the Petition for Review and resulting jurisdiction of the CTA over the same, the Supreme Court found that under the circumstances, the petitioner genuinely chose to await the CIR's final decision on its appeal. As such, it was immaterial that the petitioner filed its Petition for Review beyond the 180-day period for the CIR to act on its protest.[45]

More importantly, the Supreme Court elucidated why the 30-day period for filing the Petition for Review cannot be reckoned from the petitioner's receipt of the PCL, FNBS, WDL, and other subsequent letters from the RDO, and should instead be reckoned from the June 30, 2014 Letter from the RD, to wit:

> Subsection 3.1.5 of Revenue Regulations No. 12-99 is clear that if the protest is elevated to the respondent Commissioner of Internal Revenue, "the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner." **The Final Decision on Disputed**

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[40] *Supra*, note 35.
[41] G.R. No. 168498, April 24, 2007.
[42] G.R. No. 171251, March 5, 2012.
[43] *Supra*, note 35.
[44] *Id.*
[45] *Id.*

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> **Assessment was timely elevated to the Commissioner; hence, it never became final, executory, and demandable.**
>
> Neither can the 30-day period for filing a petition for review be reckoned from petitioner's receipt of any of the following issuances: the Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy. **Like the Final Decision on Disputed Assessment, all of these were not final decisions on the appeal by the Commissioner of Internal Revenue. They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner. More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise. To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made. The Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect.**
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> xxx xxx xxx
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> **The June 30, 2014 Letter denying petitioner's appeal was the final decision on the protest that is appealable to the Court of Tax Appeals.** With petitioner having filed its Petition for Review within 30 days from receipt of the June 30, 2014 Letter, the Court of Tax Appeals had jurisdiction over the petitioner's Petition for Review. *(Emphasis supplied)*[46]

A careful examination of the foregoing reveals that the FDDA, PCL, FNBS, and WDL, among others, were not considered by the Supreme Court as "the final decision of the Commissioner on the disputed assessment" from which the 30-day period to appeal to the CTA should be reckoned, because of the pending appeal of the FDDA with the CIR, coupled with the petitioner's apparent choice to wait for the final decision of the CIR on its appeal, and the subsequent issuance of the June 30, 2014 Letter finally acting on its appeal.

Similarly, in the instant case, NEECO1 timely filed a request for reconsideration of the FDDA with the CIR. This fact is supported by NEECO1's receipt of the FDDA on January 16, 2017,[47] the *Request for Reconsideration* dated February 13, 2017 filed via registered mail on February 14, 2017[48] and stamped received by the BIR on **February**

[46] *Supra*, note 35.
[47] Exhibit "P-11", Division Docket - Vol. III, pp. 1185-1186.
[48] Exhibit "P-12", Division Docket - Vol. III, pp. 1187-1204.

23, 2017,[49] and the testimony of petitioner's witness Mr. Von Richard R. Labios who caused the filing of the said request.[50] Without any action on the said appeal, within or beyond the 180-day period, the CIR, through the RD, initiated collection proceedings against NEECO1 through the issuance of the PCL dated May 5, 2017,[51] FNBS dated May 19, 2017,[52] and WDL dated **July 1, 2021**.[53]

Applying the LRTA case, the option to appeal the request for reconsideration to the CTA within thirty (30) days from the expiration of the 180-day period is irrelevant, as NEECO1 had clearly shown its intention to await the final decision of the CIR on its request. Such intention is evident from the considerable lapse of time since the filing of the said request, during which no appeal or other communication was made by petitioner. Such intention is also obvious from petitioner's *Urgent Request for Status of the Request for Reconsideration covering NEECO1's Taxable Year 2012*[54] filed with the BIR on August 4, 2021, seeking clarification on the status of its request and the reasons for the issuance of the WDL which it received on July 27, 2021.

Considering that petitioner had opted to await the final decision of the CIR on its request, the question now is which BIR issuance constitutes the "final decision" appealable to the CTA.

Certainly, the FDDA cannot be considered as the final decision of the CIR in view of its timely appeal; consequently, the FDDA did not attain finality. Neither can the PCL, FNBS and WDL be considered as the final decision of the CIR, as they were issued in connection with a non-demandable assessment. As such, they are all void and have no force and effect, in accordance with the ruling in the LRTA case.

This is bolstered by the ruling in *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*,[55] where the Supreme Court held that availing of the summary collection remedies under the Tax Code, such as the issuance of a WDL, are premised on the existence of "delinquent taxes." This premise is lacking when the matter of the taxpayer's civil liability is subject of a valid request for reinvestigation

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[49] Exhibit "R-17", CTA Case No. 10632 BIR Records, pp. 717-734.
[50] Exhibit "P-29", *Judicial Affidavit* dated June 3, 2022, CTA Case No. 10587 Division Docket - Vol. II, pp. 713-714.
[51] Exhibit "R-13", CTA Case No. 10632 BIR Records, p. 581.
[52] Exhibit "R-14", CTA Case No. 10632 BIR Records, p. 615.
[53] Exhibit "P-3", Division Docket - Vol. I, p. 48, Exhibit "R-15", CTA Case No. 10632 BIR Records, p. 686.
[54] Exhibit "P-13", Division Docket - Vol. III, p. 1219.
[55] G.R. No. 244202, July 10, 2023.

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(or reconsideration, as in this case) which is still pending resolution by the CIR and his authorized agents.[56]

Following the foregoing discussion, and upon review of the records of the case, it appears that the CIR did not issue and serve on NEECO1 any final decision on the latter's request for reconsideration of the FDDA, despite the lapse of a substantial period of time from the filing of the said request. This notwithstanding, NEECO1 is not left without any remedy in law for the protection of its rights.

It is important to note that jurisdiction over the subject matter refers to the power of a court to hear and determine cases of a general class to which the proceedings in question belong.[57] It is conferred only by law.[58] It cannot be fixed by the will of the parties nor can it be acquired, enlarged or diminished by any act of the parties.[59] **What determines the nature of an action, as well as which court has jurisdiction over it, are the allegations in the complaint and the character of the relief sought,[60] irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[61]**

Relatedly, the jurisdiction of the CTA to review by appeal is not limited to decisions of the CIR in cases involving disputed assessments and refunds, but also includes "other matters" arising under the Tax Code or other laws administered by the BIR. Such power is codified under Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, which reads:

> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;**
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> *(Emphasis supplied)*

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[56] *Id.*
[57] *Heirs of Concha, Sr. v. Spouses Lumocso*, G.R. No. 158121, December 12, 2007.
[58] *City of Lapu-Lapu v. Phil. Economic Zone Authority*, G.R. Nos. 184203 & 187583, November 26, 2014.
[59] *Municipality of Sogod v. Rosal*, G.R. No. 38204, September 24, 1991.
[60] *Cubero v. Laguna West Multi-Purpose Cooperative, Inc.*, G.R. No. 166833, November 30, 2006.
[61] *Platinum Tours and Travel Inc. v. Panlilio*, G.R. No. 133365, September 16, 2003.

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[62] as aptly cited by the Court *a quo*, the Supreme Court proclaimed that the wording of the above-cited provision is clear and simple–it gives the CTA the jurisdiction to determine if the WDL issued by the BIR is valid.

Further, in *Commissioner of Internal Revenue v. Pacific Hub Corp.*,[63] the Supreme Court emphasized that the CTA has the power to review not only matters arising or incidental to tax assessments or refunds, but also to *any* case arising from the application of the provisions of the Tax Code or other tax laws that are administered by the BIR. In fact, the Court has affirmed the CTA's "other matters" jurisdiction over cases involving the right of the CIR to collect the validly assessed tax and the cancellation and withdrawal of a WDL.

A perusal of the Petition for Review filed with the Court *a quo* in CTA Case No. 10632 shows that NEECO1, invoking the "other matters" jurisdiction of the CTA, prays, first and foremost, for the cancellation, annulment, reversal and setting aside of the subject WDL, and for the cancellation of the assessment sought to be satisfied.[64] It principally argues that the subject WDL and the assessment sought to be satisfied by it have no basis in law.[65] Moreover, the subject WDL should be cancelled because the assessment sought to be satisfied by it is not yet delinquent.[66]

Based on the allegations in the said Petition and the character of the relief sought therein, the Court has jurisdiction over case pursuant to Section 7(a)(1) of RA No. 1125, as amended; and with respect to the timeliness of the appeal filed with the Court *a quo*, We adopt the findings of the latter, to wit:

> Thus, it was proper for petitioner to file the Petition for Review within thirty (30) days from receipt of the WDL to protect its interest from the premature distraint or levy of its properties. Here, petitioner received the assailed WDL on **July 27, 2021**. It had thirty (30) days therefrom, or until **August 26, 2021**, within which to file the petition for review.
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> The Supreme Court issued, however, Administrative Circular (AC) No. 56-2021, which ordered the physical closure of all courts in the National Capital Region (NCR) from August 2 to 20, 2021, and suspended the filing and service of pleadings and motions during such closure, which shall resume after seven (7) days from the physical reopening of the courts. Thereafter, the Court Administrator

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[62] G.R. No. 162852, December 16, 2004.
[63] G.R. No. 252944, November 27, 2024.
[64] CTA Case No. 10632 Division Docket - Vol. I, p. 7-8.
[65] CTA Case No. 10632 Division Docket - Vol. I, p. 14.
[66] *Id.*

> issued OCA Circular Nos. 114-2021, 119-2021, and 120-2021, and the Supreme Court issued AC No. 75-2021, which ordered the continued physical closure of all courts in NCR, except the Supreme Court, and maintained the suspension of the period for filing of pleadings and motions. Such suspension was only lifted beginning **October 20, 2021** with the issuance by the Supreme Court of AC No. 83-2021, thus the filing of pleadings and motions resumed seven (7) days from such date. The filing of the Petition for Review in **CTA Case No. 10632** on **October 21, 2021** was therefore timely, and the Court has jurisdiction to decide said case.

This Court observes, however, that the Petition for Review in CTA Case No. 10632 was actually filed via registered mail on September 13, 2021[67] and personally filed on October 26, 2021.[68] Nonetheless, pursuant to the foregoing findings of the Court *a quo*, the said Petition was still timely filed.

Jurisdiction of the Court in Division over CTA Case No. 10587

Similar to the events that transpired during the 2012 tax audit of NEECO1, the Court *a quo* found the following for the 2013 tax audit: **(1)** NEECO1 received the FDDA issued by the OIC-RD on January 31, 2017; **(2)** it filed a request for reconsideration thereto with the CIR on March 2, 2017; and **(3)** pending the resolution of the said request, the PCL dated May 4, 2017 and WDL dated June 3, 2021, which was received by NEECO1 on June 18, 2021, were issued.

The Court *a quo* held that NEECO1 again chose to genuinely wait for the CIR's decision on its administrative appeal. It also stated that the issuance of the PCL and WDL were premature. Nonetheless, within thirty (30) days from receipt of the WDL on June 18, 2021, petitioner filed its Petition for Review on July 14, 2021; thus, the same was filed on time.

The CIR raises the same arguments it raised in relation to the 2012 tax audit of NEECO1, particularly that the issuance of the WDL was not the first time that he actively pursued the collection of deficiency taxes for TY 2013; that he proceeded with his collection efforts when the PCL was issued and served on NEECO1; and that the latter's request for reconsideration was deemed denied upon the issuance and service of the PCL, with such denial constituting the final decision of the CIR on the said request.

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[67] CTA Case No. 10632 Division Docket - Vol. I, p. 282.
[68] CTA Case No. 10632 Division Docket - Vol. I, pp. 1-7.

NEECO1 similarly counters that it timely filed a request for reconsideration of the FDDA; that it opted to wait for the decision of the CIR on the said request; that after its receipt of the WDL, it filed a letter requesting for the status of its request for reconsideration; that the 30-day period to appeal to the CTA should not be reckoned from the receipt of the PCL as it was never served on NEECO1; and that the WDL was merely issued by the RD of Revenue Region No. 4, and not by the CIR himself.

Applying the earlier discussion on jurisdiction of the Court *a quo* over CTA Case No. 10632, We likewise find the Petition for Review in **CTA Case No. 10587** to be timely filed.

After receipt of the FDDA on January 31, 2017,[69] NEECO1 filed via registered mail a *Request for Reconsideration* with the CIR on March 2, 2017,[70] which was received by the BIR on **May 23, 2017**.[71] Subsequently, without any decision on the said request, the CIR allegedly issued the PCL dated May 4, 2017, which was later on during trial proven to be suspended, cancelled and not served on NEECO1.[72] Thereafter, still without any decision on the said request, the CIR, through the RD, issued the WDL dated June 3, 2021[73] which was received by NEECO1 on **June 15, 2021**.[74] It was only at this point that NEECO1 formally communicated with the BIR again, through the filing of its *Urgent Request for the Status of the Request for Reconsideration covering NEECO1's Taxable Year 2013* dated July 2, 2021, which was received by the BIR on July 5, 2021.[75]

It can be gleaned from the foregoing findings that NEECO1 indeed opted to await the final decision of the CIR on its request for reconsideration beyond the 180-day period; and since the said request was still pending resolution at the time the WDL was issued and served on NEECO1, the same is considered null and void, being issued in connection with a non-demandable assessment, per the ruling in the LRTA case.

As it turns out that there was no final decision by the CIR on NEECO1's request for reconsideration of the FDDA, NEECO1, understandably so to protect its rights, filed the Petition for Review in CTA Case No. 10587 within thirty (30) days from its receipt of the subject WDL, or on July 14, 2021.

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[69] Exhibit "P-18", Division Docket - Vol. III, pp. 1264-1265.
[70] Exhibit "P-19", Division Docket - Vol. III, pp. 1264-1265.
[71] Exhibit "R-26", CTA Case No. 10587 BIR Records, p. 484.
[72] *Transcript of Stenographic Notes* (TSN), Revenue Officer Jeanette T. Pare, January 17, 2023, pp. 33-34.
[73] Exhibit "R-24", CTA Case No. 10587 BIR Records, p. 456.
[74] Exhibit "P-4", Division Docket - Vol. I, p. 37.
[75] Exhibit "R-26", CTA Case No. 10587 BIR Records, p. 557.

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In its Petition for Review before the Court *a quo*, NEECO1 likewise prayed for the cancellation, annulment, reversal and setting aside of the subject WDL, and for the cancellation of the assessment sought to be satisfied,[76] anchoring the same on the CTA's jurisdiction over "other matters" arising under the Tax Code. It also argues that the subject WDL and the assessment sought to be satisfied by it are illegal, considering that the said assessment is not yet delinquent.[77]

For these reasons, We find that the Court *a quo* has jurisdiction over CTA Case No. 10587, and that the Petition for Review in relation thereto was filed on time.

The Court in Division was correct in ruling that electric cooperatives governed by PD No. 269, as amended, are subject to income tax on certain sources

NEECO1 failed to show any clear and unequivocal provision of law granting NEA cooperatives permanent income tax exemption

The Court *a quo* held that pursuant to FIRB Resolution No. 24-87,[78] NEA cooperatives' income from electric service operations and other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements, remain taxable.

It also held that jurisprudence has recognized not only the validity of FIRB Resolution No. 24-87, but also Executive Order (EO) No. 93[79] as constituting a valid delegation to the FIRB of legislative power to restore tax exemptions withdrawn and to impose conditions for such restoration.

It further held that there is nothing in Section 32-A of PD No. 269 (NEA Decree),[80] as amended by RA No. 10531 (NEA Reform Act of 2013),[81] nor in other provisions thereof, nor in other related laws, which states that the income tax exemption of electric cooperatives

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[76] CTA Case No. 10587 Division Docket - Vol. I, p. 7-8.
[77] CTA Case No. 10587 Division Docket - Vol. I, p. 13.
[78] July 14, 1987.
[79] *Withdrawing All Tax and Duty Incentives of the Fiscal Incentives Review Board*, December 17, 1986.
[80] August 6, 1973.
[81] May 7, 2013.

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under PD No. 269, as amended, has been **totally** restored. The rule is that tax exemptions must be clear and unequivocal. Any doubt whether a tax exemption exists is resolved against the taxpayer.

In its appeal, NEECO1 basically argues that the power to determine the fiscal incentives of NEA cooperatives is no longer with the FIRB but with Congress. Thus, when Congress enacted the NEA Reform Act of 2013, and when it did not adopt nor incorporate therein the conditions stated in FIRB Resolution No. 24-87, the legislative intent was to reject the conditions under FIRB Resolution No. 24-87 and to retain the permanent exemption of electric cooperatives under Section 39 of PD No. 269.

NEECO1's contentions fail to persuade.

At the outset, it is an established rule in statutory construction that in order that one law may operate to repeal another law, the two laws must be inconsistent and so repugnant as to be irreconciliable with the other.[82]

Moreover, repeals by implication are not favored and will not be decreed unless it is manifest that the legislature so intended. The legislature is presumed to know the existing laws so that **if repeal is intended, the proper step is to express it.** Failure to add a specific repealing clause indicates that the intent was not to repeal any existing law **unless there is a showing that a plain, unavoidable, and irreconcilable inconsistency and repugnancy exists in terms of the new and old laws.**[83]

Although a latter enactment may relate to the same subject matter as that of an earlier statute, such relation by itself is not sufficient to cause an implied repeal of the latter, since the new law may be cumulative or a continuation of the old one.[84]

In any case, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject.[85]

Apropos are the following legal issuances, among others:

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[82] *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*, G.R. No. 157882, March 30, 2006.
[83] *People v. Mendez*, G.R. Nos. 208310-11 & 208662, March 28, 2023.
[84] *Supra*, note 80.
[85] *Hagad v. Gozo-Dadole*, G.R. No. 108072, December 25, 1995.

(1) PD No. 269 decreed by former president Ferdinand E. Marcos in 1973, granting unto NEA cooperatives permanent exemption from paying income taxes.

Section 39(a) thereof provides:

> **Section 39.** *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.* Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:
>
> (a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperative **<u>(1) shall be permanently exempt from paying income taxes</u>**, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: Provided, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree. *(Emphasis supplied)*

(2) PD No. 776[86] decreed by former president Marcos in 1975, creating the FIRB for the purpose of determining what subsidies and tax exemptions should be modified, withdrawn, revoked or suspended.

Sections 1 and 2 thereof read:

> SECTION 1. **<u>Any and all tax exemption benefits and privileges validly acquired, exercised and granted to individuals, associations, corporations and entities, and all laws, decrees, orders or ordinances</u>**

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[86] *Modifying all laws, acts, decrees, orders and ordinances granting subsidies, exemptions from taxes, duties, fees, imposts and other charges under certain exceptions, and creating a Fiscal Incentives Board,* August 24, 1975.

> **giving rise thereto, may now be modified by the Fiscal Incentives Review Board** except those embraced and expressly provided hereunder, to wit:
>
> 1. Constitutional provisions
>
> 2. International comity or treaty
>
> 3. National Internal Revenue Code as of its amendment by PD 69
>
> 4. Tariff and Customs Code as of its amendment by PD 34
>
> 5. Local Tax Code as of its amendment by PD 426
>
> 6. Statutory prescription bearing on —
>   a. Export Processing Zone Authority
>   b. BOI-Registered industries
>   c. Multi-national corporations
>   d. Service contracts on oil explorations
>
> SECTION 2. A Fiscal Incentives Review Board is hereby created **for the purpose of determining what subsidies and tax exemptions should be modified, withdrawn, revoked or suspended**, which shall be composed of the following officials: xxx xxx xx
>
> *(Emphasis supplied)*

(3) PD No. 1955[87] decreed by former president Marcos in 1984, withdrawing all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts and other charges granted to private business enterprises and/or persons engaged in any economic activity, subject to exceptions;

(4) PD No. 2008[88] decreed by former president Marcos in 1986, restoring certain privileges to cooperatives which are in good standing, subject to conditions;

(5) EO No. 93 decreed by former president Corazon C. Aquino in 1986, withdrawing all tax and duty incentives granted to government and private entities, subject to exceptions; and granting unto the FIRB the authority to, among others, restore tax exemptions withdrawn under the said Order, revise the scope and coverage of tax exemptions that may be restored, and impose conditions for the restoration of such tax exemptions.

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[87] *Withdrawing Duty and Tax Privileges of Private Business Enterprises and/or Persons Engaged in Any Economic Activity*, October 10, 1984.
[88] Amendments to PD No. 175, as amended by PD No. 1955, January 8, 1986.

Sections 1, 2 and 5 of the said Order state:

> SECTION 1. **<u>The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn</u>**, except:
>
> a) those covered by the non-impairment clause of the Constitution;
>
> b) those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;
>
> c) those enjoyed by enterprises registered with:
> (i) the Board of Investments pursuant to Presidential Decree No. 1789, as amended;
> (ii) the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;
> (iii) the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended;
>
> d) those enjoyed by the copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;
>
> e) those conferred under the four basic codes namely:
> (i) the Tariff and Customs Code, as amended;
> (ii) the National Internal Revenue Code, as amended;
> (iii) the Local Tax Code, as amended;
> (iv) the Real Property Tax Code, as amended;
>
> f) those approved by the President upon the recommendation of the Fiscal Incentives Review Board.
>
> SECTION 2. **<u>The Fiscal Incentives Review Board created under Presidential Decree No. 776, as amended, is hereby authorized to:</u>**
>
> **<u>a) restore tax and/or duty exemptions withdrawn hereunder in whole or in part;</u>**
>
> **<u>b) revise the scope and coverage of tax and/or duty exemption that may be restored;</u>**
>
> **<u>c) impose conditions for the restoration of tax and/or duty exemption;</u>**
>
> d) prescribe the date or period of effectivity of the restoration of tax and/or duty exemption;

> e) formulate and submit to the President for approval, a complete system for the grant of subsidies to deserving beneficiaries, in lieu of or in combination with the restoration of tax and duty exemptions or preferential treatment in taxation, indicating the source of funding therefor, eligible beneficiaries and the terms and conditions for the grant thereof taking into consideration the international commitments of the Philippines and the necessary precautions such that the grant of subsidies does not become the basis for countervailing action.
>
> xxx xxx xxx
>
> SECTION 5. All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly. *(Emphasis supplied)*

(6) FIRB Resolution No. 24-87 issued by the FIRB in 1987, restoring the tax exemption privileges of electric cooperatives under PD No. 269 effective July 1, 1987, except for income from their electric service operations and other sources which shall remain taxable. The said Resolution is reproduced, to wit:

> BE IT RESOLVED, AS IT IS HEREBY RESOLVED, That the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 (Creating the National Electrification Administration as a corporation, prescribing its powers and activities, appropriating the necessary funds therefor and declaring a national policy objective for the total electrification of the Philippines on an area coverage basis; the organization, promotion and development of electric cooperatives to attain the said objective, prescribing terms and conditions for their operations, the repeal of Republic Act No. 6038, and for other purposes), as amended, are restored effective July 1, 1987: ***Provided, however,* That, income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable**; *Provided, further*, That the electric cooperatives shall furnish the FIRB on an annual basis or as often as the FIRB may require them to do so, statistical and financial statements of their operations and other information as may be required, for purposes of effective and efficient tax and duty exemption availment. *(Emphasis supplied)*

(7) RA No. 6938 (Cooperative Code of the Philippines)[89] signed into law by former president Aquino in 1990, as amended by RA No. 9520 (Philippine Cooperative Code of 2008)[90] signed into law by former president Gloria Macapagal Arroyo in 2009; and,

(8) RA No. 10531 signed into law by former president Benigno S. Aquino III in 2013, amending certain provisions of PD No. 269, and inserting new provisions thereto. **Notably, RA No. 10531 is silent as to Section 39(a) of PD No. 269.**

Sections 13 and 18 of RA No. 10531, however, provide:

> SECTION 13. A new section, to be designated as Section 32-A, of Presidential Decree No. 269, as amended, is hereby inserted to read as follows:
>
> > "SEC. 32-A. *Incentives of Electric Cooperatives.* — Consistent with the declared policy of this Act, **electric cooperatives which comply with the financial and operational standards set by the NEA shall enjoy the following incentives:**
> >
> > > "(a) To be entitled to congressional allocations, grants, subsidies and other financial assistance for rural electrification;
> > >
> > > "(b) To receive all subsidies, grants and other assistance which shall form part of the donated capital and funds of the electric cooperatives, and as such, it shall not be sold, traded nor divided into share holdings at any time. These donated capital and funds shall be appraised and valued for the sole purpose of determining the equity participation of the members: *Provided,* That in case of dissolution or conversion of the electric cooperative, said donated capital and funds shall be subject to escheat; and
> > >
> > > "(c) To avail of the preferential rights granted to cooperatives under Republic Act No. 7160, otherwise known as the 'Local Government Code of 1991', and other related laws.
> >
> > "As a further incentive, the NEA may prioritize the grant of incentives in favor of electric cooperatives that are managed effectively and efficiently and comply consistently with its mandates and directives."

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[89] March 10, 1990.
[90] February 17, 2009.

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> SECTION 18. *Repealing Clause.* — Article 132 (3) of Republic Act No. 9520 and Section 30 of Republic Act No. 9136 (EPIRA) on NEA's authorized capital stock are hereby repealed. Any other provision of law, presidential decree, executive order, or rules and regulations inconsistent with the provisions of this Act or with the rules and regulations issued pursuant thereto are hereby repealed or modified accordingly.

A thorough review of the foregoing ultimately reveals that while Section 39(a) of PD No. 269 indeed grants unto NEA cooperatives tax and duty exemption privileges, EO No. 93 eventually withdrew all such privileges, subject to exceptions, and vested in the FIRB the authority to restore such privileges, to revise the scope and coverage of the privileges to be restored, and to impose conditions for the restoration. Clearly, then, Section 39(a) of PD No. 269 was effectively repealed by EO No. 93. Although Memorandum Order No. 65[91] suspended the implementation of EO No. 93 on electric cooperatives, such suspension ended on June 30, 1987.

Thereafter, the FIRB, by virtue of the authority vested in it by EO No. 93, issued FIRB Resolution No. 24-87 which restored the tax and duty incentives of NEA cooperatives under Section 39(a) of PD No. 269, but revised the scope and coverage of such incentives by excluding income tax exemption on electric service operations and other sources.

It bears stressing that the Supreme Court in *Maceda v. Macaraig, Jr.*,[92] as correctly cited by the Court *a quo*, categorically declared EO No. 93 as complete in itself and constitutive of a valid delegation of legislative power to the FIRB. Further, in *Davao Oriental Electric Cooperative, Inc. v. Province of Davao Oriental*,[93] the Supreme Court, in resolving the issue of retroactivity of FIRB Resolution No. 24-87, necessarily recognized the validity of the same.

It is true that the above-mentioned cases were promulgated before the enactment of RA No. 10531 in 2013; regardless, **scrutiny of the said law shows that none of the provisions therein either expressly or impliedly amends EO No. 93 in relation to FIRB Resolution No. 24-87, which, in turn, amended Section 39(a) of PD No. 269.**

As correctly pointed out by the Court *a quo*, there is really nothing in Section 32-A of RA No. 10531, nor in any

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[91] *Suspended Implementation of E.O. No. 93 for Certain Cooperatives*, January 21, 1987.
[92] G.R. No. 88291, May 31, 1991.
[93] G.R. No. 170901, January 20, 2009.

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other provision thereof, nor in its Implementing Rules and Regulations,[94] which states that the permanent income tax exemption of electric cooperatives under Section 39(a)(1) of PD No. 269, as amended, is retained or restored.

Furthermore, there is no irreconcilable inconsistency existing between or among any of the amended and additional provisions incorporated by RA No. 10531 to PD No. 269, and EO No. 93 in relation to FIRB Resolution No. 24-87, so as to warrant the construction of an implied repeal of the latter by the former. In fact, RA No. 10531 makes no modification whatsoever on Section 39(a) of PD No. 269 relative to income tax exemption on electric service operations and other sources.

NEECO1's argues that since Congress did not retain the conditions and limitations provided under FIRB Resolution No. 24-87 and did not amend Section 39(a) of PD No. 269 when it enacted RA No. 10531, its clear intention is to retain the permanent income tax exemption of NEA cooperatives under Section 39(a) of PD No. 269.

Regrettably, NEECO1's argument is lacking. It fails to consider that Section 39(a) of PD No. 269 has already been amended by EO No. 93 and validly qualified by FIRB Resolution No. 24-87, as discussed above. Thus, per Section 39(a) of PD No. 269 as it currently stands, income of electric cooperatives governed by PD No. 269 from electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements, are subject to income tax.

There being no modification on Section 39(a) of PD No. 269 upon the enactment of RA No. 10531, Section 39(a) of PD No. 269, **as amended by EO No. 93 and further qualified by FIRB Resolution No. 24-87**, remains in full force and effect.

To further support its argument that the legislative intent behind RA No. 10531 is to retain the permanent income tax exemption of NEA cooperatives under Section 39(a) of PD No. 269, NEECO1 submits copies of records purportedly showing the Congress' deliberations on RA No. 10531, by way of attachment to the instant Petition for Review and/or to its Motion for Partial Reconsideration of the assailed Decision filed before the Court *a quo*.

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[94] DOE Department Circular No. DC2013-07-0015, July 26, 2013.

Records of the case, however, show that the said documents were not presented during trial nor formally offered as evidence.[95]

It is essential to highlight that documents merely attached to pleadings are generally not admissible in evidence. This is because under Section 34, Rule 132 of the Revised Rules on Evidence,[96] the Court shall not consider evidence which has not been formally offered. In *Fideldia v. Spouses Mulato*,[97] the Supreme Court explained, thus:

> *Firstly,* Leticia never offered in evidence a lease contract with the spouses Mulato pertaining to the properties. Instead, she merely attached a lease contract to some of her pleadings. **Generally, documents merely attached to pleadings are not admissible in evidence.** Section 34, Rule 132 of the Rules of Court, provides that "[t]he court shall consider no evidence which has not been formally offered". **A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. To allow parties to attach any document to their pleadings and then expect the court to consider it as evidence, even without formal offer and admission, may draw unwarranted consequences. Opposing parties will be deprived of their chance to examine the document and to object to its admissibility. On the other hand, the appellate court will have difficulty reviewing documents not previously scrutinized by the court below.** *(Emphasis supplied)*

While the foregoing rule has exceptions established by jurisprudence,[98] such exceptions may only be applied when there is strict compliance with the requisites provided therefor; otherwise, the general rule in Section 34, Rule 132 of the Revised Rules on Evidence shall apply.

In this case, NEECO1 does not justify the application of any exception. As such, the general rule applies; thus, the Court may not consider in evidence the documents merely attached to the instant Petition for Review and/or to the Motion for Partial Reconsideration of the assailed Decision filed by NEECO1 before the Court *a quo*.

Even if this Court were to take judicial notice of the attached portions of the Congressional debates on RA No. 10531, it is worth

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[95] *Formal Offer of Evidence* dated September 12, 2022, Case No. 10587 Docket, pp. 1147-1164.
[96] A.M. No. 19-08-15-SC (Resolution), October 8, 2019.
[97] G.R. No. 149189, September 3, 2008.
[98] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

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noting that the courts are not necessarily bound by one legislator's opinion, concerning the application of existing laws.[99]

In *Manila Jockey Club, Inc. v. Games and Amusements Board,*[100] the High Court elucidated the reasons thereof, to wit:

> Legislative debates are expressive of the views and motives of individual members and are not safe guides and, hence, may not be resorted to in ascertaining the meaning and purpose of the lawmaking body. It is impossible to determine with certainty what construction was put upon an act by the members of the legislative body that passed the bill, by resorting to the speeches of the members thereof. Those who did not speak, may not have agreed with those who did; and those who spoke, might differ from each other.

Citing the aforesaid case, the High Court further stated in *Nilo v. Court of Appeals*,[101] viz.:

> There have been cases in the past where we adhered to this doctrine. Thus, we held that individual statements made by Senators on the floor of the Senate do not necessarily reflect the view of the Senate. Much less do they indicate the intent of the House of Representatives (Casco Phil. Chem. Co., Inc. v. Gimenez, 7 SCRA 347; Resins, Inc. v. Auditor General, 25 SCRA 754). Accordingly, they are not controlling in the interpretation of the law in question (Phil. Assn. of Government Retirees, Inc. v. GSIS, 14 SCRA 610). Some statements may be deemed to be a mere personal opinion of the legislator (Mayon Motors, Inc. vs. Acting Com. of Internal Revenue, 1 SCRA 918).
>
> The interpretation of statutes is for the courts. And the courts are not necessarily bound by one legislator's opinion, expressed in Congressional debates, concerning the application of existing laws (Song Kiat Chocolate Factory vs. Central Bank of the Phils., 102 Phil. 477).

Considering the foregoing, the copies of records of Congressional deliberations on RA No. 10531, even if admitted and/or considered by the Court, shall be given scant consideration in determining the true intent of the lawmakers in passing the said law.

More so, it is a fundamental principle in taxation that tax exemptions must be expressed in the statute in clear language that leaves no doubt as to the intention of the legislature to grant such exemption.[102] Stated differently, tax exemptions should be granted

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[99] *Nilo v. Court of Appeals*, G.R. No. L-34586, L-36625, April 2, 1984.
[100] G.R. No. L-12727, February 29, 1960.
[101] *Supra*, note 95.
[102] *PLDT v. City of Davao*, G.R. No. 143867, August 22, 2001.

only by clear and unequivocal provision of law on the basis of language too plain to be mistaken.[103] Even if it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[104]

As the right of taxation is inherent in the State and a prerogative essential to the perpetuity of the government, he who claims an exemption from the common burden must justify his claim by the clearest grant of organic or statute law.[105]

In light of the foregoing disquisition, and even considering the references made by NEECO1 to the provisions of RA No. 9520 and the Department of Finance Joint Rules and Regulations dated February 5, 2010, NEECO1 has still failed to show any clear and unequivocal provision of law, or any other proof bearing equivalent weight, that would justify an interpretation that disregards EO No. 93 in relation to FIRB Resolution No. 24-87, and isolates Section 39(a) of PD No. 269 in relation to RA No. 10531.

Adherence to FIRB Resolution No. 24-87 does not contravene the constitutional policy on cooperatives

NEECO1 insists that the ruling of the Court *a quo* adopting the conditions under FIRB Resolution No. 24-87 contravenes Section 15, Article XII of the 1987 Philippine Constitution.[106]

This argument is specious.

Section 15, Article XII of the 1987 Philippine Constitution provides, as follows:

> **Section 15.** The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.

This constitutional provision, by itself, falls short of establishing adequate legal basis for granting a specific tax privilege (*i.e.*, permanent income tax exemption) in favor of a particular class of

[103] *Philippine Long Distance Telephone Co. v. City of Davao*, G.R. No. 143867 (Resolution), March 25, 2003.
[104] *Id.*
[105] *Asiatic Petroleum Co., Ltd. v. Llanes*, G.R. No. 25386, October 20, 1926.
[106] February 2, 1987.

cooperatives (*i.e.*, NEA cooperatives) where the prevailing statutes governing such entities do not clearly and unequivocally provide for such benefit, and where a valid administrative issuance categorically denies the same.

We are wholly aware that the 1987 Philippine Constitution encourages cooperatives[107] and guarantees their protection as instruments for social justice and economic development.[108] Consistent with this constitutional policy, Section 39(a) of PD No. 269, as amended, to attain the objective of having total electrification of the entire Philippines on an area coverage basis,[109] extends assistance to cooperatives, one of which is exemption from taxes.

A perusal of the said provision, however, clearly shows that entitlement to preferential tax treatment is subject to several conditions. *For example,* to be entitled to any kind of tax exemption, a cooperative must operate "in conformity with the purposes and provisions of this Decree."[110] *Another example* is the exemption from the payment of all National Government, local government and municipal taxes and other fees, which is not absolute, being subject to temporal limitations.[111] *Furthermore*, the Board of Administrators shall, after consultation with the BIR, promulgate rules and regulations for the proper implementation of such tax exemptions.[112]

The imposition of these conditions for the availment of preferential tax treatment cannot be construed as contravening the constitutional policy in favor of cooperatives, just because such conditions limit the State's grant of tax incentives to the same. It cannot be overemphasized that **there is no vested right in a tax exemption. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.**[113] Thus, as long as the conditions for the availment of tax benefits are imposed in accordance with the law and applicable rules, and as long as cooperatives comply with such conditions, there is nothing to stop them from enjoying tax benefits.

By parity of reasoning, adherence to the limitations imposed under FIRB Resolution No. 24-87 does not transgress the constitutional policy in favor of cooperatives, given that such

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[107] Section 1, Article XII of the 1987 Philippine Constitution.
[108] *Dumaguete Cathedral Credit Cooperative v. Commissioner of Internal Revenue*, G.R. No. 182722, January 22, 2010.
[109] *Supra*, note 78.
[110] Section 39(a), PD No. 269, August 6, 1973.
[111] *Id.*
[112] *Id.*
[113] *Republic v. Caguioa*, G.R. No. 168584, October 15, 2007.

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limitations are expressly provided under a valid administrative issuance, anchored on a valid delegation of legislative power.[114]

Anent NEECO1's contention that the assailed Decision and Resolution will result in a violation of the principle of administrative feasibility of taxation, suffice it to say that the remedy against a strict application of FIRB Resolution No. 24-87 is by amendment or curative legislation, and not by judicial decree.

The Court in Division was correct in ruling that despite NEECO1's liability for income tax, the assessments for TYs 2012 and 2013 are void

The BIR's legal basis for the 2012 assessment is erroneous; NEECO1's reliance on NEA Legal Advisory No. 18, in relation to RMC No. 72-2003, may be allowed

In the assailed Decision, the Court in Division found that prior to the promulgation of Revenue Memorandum Circular (RMC) No. 74-2013, upon which the income tax assessment for TY 2012 was based, the CIR issued RMC No. 72-2003 which clarified the tax exemptions enjoyed by electric cooperatives registered with the NEA. Since RMC No. 72-2003 was the prevailing rule during the whole TY 2012 and on the date when NEECO1 was required to file its Final Adjusted Return or Annual Income Tax Return on April 15, 2013, NEECO1 cannot be faulted in not reporting any taxable income for such period.

It is noted that the CIR does not address the foregoing findings in its Petition for Review in CTA EB No. 2931; instead, it generally argues that NEECO1 is not exempt from the payment of income taxes and is liable for deficiency income tax for TYs 2012 and 2013 per FIRB Resolution No. 24-87, in relation to Section 39 of PD No. 269.

Given the unique factual circumstances attendant in this case, We agree with the findings of the Court *a quo*.

A review of the *Details of Discrepancies* attached as "Annex A" to the PAN dated June 21, 2016[115] and also to the FLD dated July 25,

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[114] *Supra*, note 90.
[115] Exhibit "R-6-1", CTA Case No. 10632 BIR Records, p. 224.

2016,[116] and even to the FDDA dated December 27, 2016,[117] indeed show that the legal basis for the BIR's imposition of income tax against NEECO1 for TY 2012 is **RMC No. 74-2003**. The relevant portion of the *Details of Discrepancies* is reproduced, to wit:

> 1) Income Tax
>
> A. **In the Revenue Memorandum Circular No. 74-2013** circularizing the tax implications of Electric Cooperatives registered with National Electrification Administration pursuant to BIR Ruling No. 398-2013 dated November 4, 2013 addressed to RMM Veluz Accounting Firm, BIR ruled, to quote:
>
> *"Accordingly this Office opines that MARELCO's income from its electric service operations is subject to income tax. Beginning January 1, 2004, however, MARELCO is subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes as its exemption ended December 31, 2003, the thirtieth full calendar year after the cooperative's organization as stated in its registration papers or until it shall become completely free of indebtedness incurred by borrowing whichever comes first."*
>
> Therefore, similar to the case of MARELCO, income from your electric service operations in 2012 is already subject to income tax as your income tax exemption ended December 31, 2003, thirty years after your corporate organization.
>
> *xxx xxx xxx*
>
> *(Emphasis supplied)*

However, it appears from NEECO1's evidence that with respect to its income tax status, it heavily relied on the opinion espoused by the NEA itself in its Legal Advisory No. 18 dated August 20, 2014,[118] which, in turn, cited RMC No. 72-2003, which reads:

> TO: ALL ELECTRIC COOPERATIVES
> ALL NEA OFFICES CONCERNED
>
> SUBJECT: INCOME TAX EXEMPTION OF ELECTRIC COOPERATIVES ORGANIZED UNDER P.D. 269
>
> This Legal Advisory is intended to **categorically address the widespread queries coming from electric cooperatives**

[116] Exhibit "R-9", CTA Case No. 10632 BIR Records, p. 310.
[117] Exhibit "R-11", CTA Case No. 10632 BIR Records, p. 562.
[118] Exhibit "P-25", CTA Case No. 10587 Division Docket - Vol. III, pp. 1295-1296.

(ECs) on whether or not ECs registered with National Electrification Administration (NEA) are subject to income tax and the minimum corporate income tax (MCIT).

At the outset, we reiterate NEA's stand on the matter which have been stated as early as 2004 in our Legal Advisory No. 3 dated 20 July 2004, copy of which is hereto attached for ready reference as Annex A:

1. **ECs registered with NEA are permanently exempted from income tax pursuant to Section 39 (a) (1) of Presidential Decree No. 269 which provision is still effective.** Section 39 of PD 269 provides:

xxx xxx xxx

This stand of NEA was upheld in 2006 by no less than Assistant Commissioner James H. Roldan of the Legal Service of the Bureau of Internal Revenue (BIR) in his letter to OIC Revenue District Officer Roberto S. Bucoy dated March 14, 2006 with Reference No. DA-108-2006 clarifying Paragraph A (4) of BIR Revenue Memorandum Circular (RMC) No. 72-2003 and categorically stating:

> "The exemption of ECs from income tax, on the other hand is permanent in nature as expressly provided in No. 1 of Section 39 (a) of P.D. 269."

Copies of the BIR RMC No. 72-2003 and the above-stated Legal Opinion of BIR Assistant Commissioner James H. Roldan are hereto attached as Annexes "B" and "C", respectively for ready reference.

xxx xxx xxx

(Emphasis supplied)

Relative thereto, RMC No. 72-2003[119] provides:

SUBJECT: *Tax Implications of Electric Cooperatives Registered with the National Electrification Administration and Cooperative Development Act*

TO: *All Internal Revenue Officials, Employees and Others Concerned*

To all internal revenue officers and others concerned, please be informed that:

A. **Electric Cooperatives (ECs) registered with the National Electrification Administration (NEA) are exempt from:**

1. Franchise tax under Section 119 of the Tax Code of 1997 (BIR Ruling No. DA-250-03 dated July 31, 2003);

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[119] October 20, 2003.

2. Value-Added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity [Sec. 109(s) of the Tax Code of 1997];

3. **Income taxes for which they are directly liable [P.D. No. 269, Sec. 39 (a)(1)];**

4. All National Government taxes and fees, including franchise, filing, recordation, license or permit fees or taxes. Provided, however, that the said exemption shall end on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs. Provided further, that the period of exemption for a new cooperative formed by consolidation, as provided in Section 29 of P.D. No. 269, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under P.D. No. 269 [P.D. No. 269, Sec. 39(a)(2)]; and

5. Three Percent (3%) Percentage Tax under Sec. 116 of the Tax Code of 1997.

(Emphasis supplied)

While the above-cited administrative issuances are insufficient to support a legal interpretation which in effect grants permanent income tax exemption in favor of NEA cooperatives, jurisprudence has provided that taxpayers relying in good faith on a generally applicable interpretative rule of the BIR, cannot be made to suffer for adhering to the same, should such interpretation later on turn out to be erroneous and reversed by the CIR or the Court.

The Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corp.*,[120] again properly cited by the Court *a quo*, had already established the rule that a general interpretative rule issued by the CIR may be relied upon by taxpayers from the time the rule is issued up to its reversal by the CIR or the Court. The rationale of the said rule was laid down, in this manner:

> Section 4 of the Tax Code, a *new* provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:
>
> > Sec. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws

[120] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

> shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. Section 246 provides as follows:

> Sec. 246. *Non-Retroactivity of Rulings*. — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers,** except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith.

Thus, **a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner** because this Section expressly states, "***Any*** revocation, modification or reversal" without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law xxx xxx xxx *(Emphasis supplied)*

The ruling of the Supreme Court in *San Roque Power*[121] is consistent with the doctrine of operative fact. The latter states that as a general rule, a void law or administrative act cannot be the source of legal rights or duties; however, the doctrine of operative fact is an exception to the general rule, such that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration.[122] Such effects and legal consequences may be left undisturbed as a matter of equity and fair play. To be sure, the operative fact doctrine affects or modifies only the effects of the unconstitutional law or void act, not the law or act itself.[123]

Applying the foregoing to the case at bar, NEECO1's good faith reliance on NEA Legal Advisory No. 18, in relation to RMC No. 72-2003, is not irrelevant and without any legal consequence. In fact, the effects of such reliance in connection with NEECO1's treatment of its income for TY 2012, may be recognized as valid and effective per prevailing jurisprudence.

On the contrary, the CIR's assessment against NEECO1 for deficiency income tax which was expressly based on RMC No. 74-2013, and which was issued only on November 26, 2013 or subsequent to the subject taxable period, is tantamount to a retroactive application of the said RMC, in direct violation of Section 246 of the Tax Code.

In view thereof, We find no reversible error in the Court *a quo*'s finding that the income tax assessment against NEECO1 for TY 2012 is void for being contrary to law.

The 2013 assessment is likewise void as the Revenue Officer who conducted the same was authorized by a mere MOA

At the outset, it is worth mentioning that NEECO1's reliance on NEA Legal Advisory No. 18, in relation to RMC No. 72-2003, is unavailing in defeating its income tax liability for TY 2013, considering the issuance and effectivity of RMC No. 74-2013 which covers the subject taxable period.

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[121] *Supra*, note 118.
[122] *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156 (Resolution), October 8, 2013.
[123] *League of Cities of the Philippines v. Commission on Elections*, G.R. Nos. 176951, 177499 & 178056 (Resolution), August 24, 2010.

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Nonetheless, the Court *a quo* found the 2013 assessment as invalid due to the lack of authority of the RO who prepared the same. It found that in the undated memorandum recommending the issuance of the PAN, it was RO Santos and Group Supervisor (GS) Lugtu who signed the same, although both were not named in the original LOA. It was noted that the authority of RO Santos emanated only from a MOA issued by the RDO, while GS Lugtu was not named in either the MOA or LOA.

In his appeal, the CIR maintains that the said ROs were duly authorized to conduct the tax audit of NEECO1 for TY 2013. He argues that a MOA was issued assigning RO Santos and GSs Tubera and Lugtu to continue the tax audit of NEECO1, and that such MOA was issued pursuant to a valid LOA. He also argues that in practice, initially assigned ROs are indeed named in the LOA, however, as a matter of feasibility, and since there is no statutory requirement that the ROs be named in the LOA itself, the ROs named in the LOA may not be the same ROs who will conclude the tax audit. Citing Revenue Memorandum Order (RMO) No. 8-2006, the CIR states that reassignment of ROs is permitted and no new LOA for the reassigned ROs is required.

Based on the records of the case, We once again agree with the findings of the Court *a quo*.

We will not belabor this issue any further. The Supreme Court in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[124] had already categorically declared and upheld in so many subsequent cases that **the practice of substituting or replacing the ROs originally named in the LOA with new ROs to continue the tax audit or investigation <u>without a separate or amended LOA</u> violates the taxpayer's right to due process in tax audit or investigation, usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer, and does not comply with existing BIR rules and regulations on the requirement of an LOA.**

The MOA does not prove the existence of authority of the substitute or replacement RO, as the MOA is not issued by the CIR or his duly authorized representative,[125] as required under Sections 6, 10 and 13 of the Tax Code, and RMO No. 37-90, as amended by RMO No. 43-90.

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[124] G.R. No. 242670, May 10, 2021.
[125] *Id.*

Essentially, the LOA is required to contain the names of the authorized ROs, and identifying the authorized ROs in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.[126]

Here, records of the case show that the LOA dated February 5, 2015[127] authorized **RO Lumba** and **GS Tubera** of Revenue District No. 23B-South Nueva Ecija to examine the books of accounts and other accounting records of NEECO1 for TY 2013. While it was RO Lumba who served the LOA, checklist of requirements, and the first and final requests for presentation of records upon NEECO1, and who received and reviewed partial/available documents,[128] **it was RO Santos who continued the tax audit of NEECO1** by replacing RO Lumba pursuant to a MOA dated July 28, 2015.[129] Thereafter, it was **RO Santos** who conducted the tax audit of NEECO1, as can be seen from **several** BIR records, **one** of which is the Memorandum[130] addressed to the RD of Revenue Region No. 4, bearing the report of RO Santos recommending the issuance of the PAN.

It is clear, therefore, that the BIR did exactly what was proscribed by the *McDonald's* case[131] and applicable tax rules – replace the RO originally named in the LOA with a new RO to continue the tax audit or investigation without a separate or amended LOA. Without the authority of a separate or amended LOA, RO Santos' examination and assessment of NEECO1 for the subject period is rendered invalid, null and void.

The issue on the legality of the subject assessments and corresponding WDLs necessarily encompasses the issue on NEECO1's right to due process

In a final effort to convince this Court to set aside the assailed Decision and Resolution, the CIR argues that his basic right to due process and fair play was violated when the Court *a quo* ruled upon the issue on due process despite the fact that such issue was never raised by NEECO1 either at the administrative or judicial level.

The CIR enumerates the arguments raised by NEECO1 in its Petition for Review in CTA Case No. 10587 and in CTA Case No. 10632,

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[126] *Supra*, note 122.
[127] Exhibit "P-5", Division Docket - Vol. III, pp. 1255.
[128] CTA Case No. 10632 BIR Records, p. 186.
[129] CTA Case No. 10632 BIR Records, p. 187.
[130] CTA Case No. 10632 BIR Records, p. 213.
[131] *Supra*, note 122.

b

and claims that the issue on due process was not raised by either party during the course of the proceedings. He asserts that the Court *a quo*'s consideration of an unraised issue deprived the BIR of the chance to present arguments, submit evidence, and defend its position thereon. Instead, such consideration not only caused surprise and prejudice to the BR, but also undermined the fairness and integrity of the judicial process.

The CIR further asseverates that Section 1, Rule 14 of the RRCTA was intended to allow the CTA to resolve the main issue under the proper perspective, and not to resolve as a main issue a matter not derived from the pleadings. He also avers that achieving an orderly disposition of the case is not synonymous with violating a litigant's basic right to fair play and due process, nor with disregarding rules of procedure and pre-trial.

The CIR additionally states that since the issue on due process was not included as a defense in NEECO1's protests to the PAN and FAN, NEECO1 is estopped from alleging the same before the Court. He submits that the CTA's jurisdiction is strictly appellate in nature, and should be confined to whether his findings on this matter are consistent with law.

The CIR's arguments betray a clear misunderstanding of the applicable principles.

Indeed, it is a fundamental principle that judgments must conform to both the pleadings and the evidence, and must be in accordance with the theory of the action upon which the pleadings were framed and the case was tried.[132]

Due process considerations justify this principle. Jurisprudence holds that it is improper for the court to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief.[133]

Now, pre-trial is a procedural device intended to clarify and limit the basic issues between the parties and to ensure that the trial of cases is taken out of the realm of surprise and maneuvering.[134] Thus, Section 7, Rule 18 of the Rules of Court[135] mandates that the contents of the

[132] *Lazo v. Republic Surety & Insurance Co., Inc.*, G.R. No. L-27365, January 30, 1970.
[133] *Development Bank of the Philippines v. Teston*, G.R. No. 174966, February 14, 2008.
[134] *LCK Industries Inc. v. Planters Development Bank*, G.R. No. 170606, November 23, 2007.
[135] A.M. No. 19-10-20-SC, October 15, 2019.

Pre-Trial Order shall control the subsequent proceedings, unless modified before trial to prevent manifest injustice.

However, the non-inclusion of an issue in the Pre-Trial Order does not bar the court from resolving such matter. Issues not included in the Pre-Trial Order **may be considered if they are impliedly included in the issues raised or inferable by necessary implication from the issues asserted.**[136]

Consistent with the foregoing, Section 1, Rule 14 of the RRCTA[137] expressly provides that the CTA, in deciding cases brought before it, whether in the exercise of its original or appellate jurisdiction, may not limit itself to the issues stipulated by the parties, **but may also rule upon related issues**, to wit:

> SECTION 1. *Rendition of Judgment.* —
>
> xxx xxx xxx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but **may also rule upon related issues necessary to achieve an orderly disposition of the case.** *(Emphasis supplied)*

Appropriately, in *Commissioner of Internal Revenue v. Yumex Philippines Corp.*,[138] the Supreme Court, through the *ponencia* of the Chief Justice, held that **the CTA was justified in ruling that the taxpayer was denied due process, even though such issue was not expressly raised in the taxpayer's petition for review.** The High Court held, to wit:

> As the CTA *En Banc* held, the CTA Division was justified in ruling on the issue that respondent was denied due process even though it was not expressly raised by respondent in its petition for review. Sec. 1, Rule 14 of the RRCTA provides that "[i]n deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." **Herein, the issue of the validity of the assessment against respondent also necessarily requires the determination of the matter of the proper issuance of said assessment in accordance with the requirements of due process. In addition, there were sufficient allegations in respondent's petition for review on the dates of issuance by the BIR and receipt by respondent of the PAN and FLD/FAN, as well as documentary and testimonial evidence to establish the essential facts for**

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[136] *Waterfront Philippines, Inc. v. Social Security System*, G.R. No. 249337, July 6, 2021.
[137] A.M. No. 05-11-07-CTA, November 22, 2005.
[138] G.R. No. 222476, May 5, 2021.

> **<u>resolution of the issue which were presented during the trial without any objection from petitioner. This could be deemed as petitioner's implied consent to try the issue, recognized under Sec. 5, Rule 10 of the Revised Rules of Court, which applies suppletorily to the RRCTA.</u>**
>
> xxx xxx xxx
>
> *(Emphasis supplied)*

Following this, in *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*,[139] the Supreme Court further clarified the parameters of the CTA's authority to pass upon additional arguments not expressly contained in the parties' joint stipulation of facts and issues, to wit:

> For tax cases before the CTA, the Court pronounced in *Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc.* that "[t]he appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them."
>
> Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that **<u>the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.</u>**
>
> From the foregoing, **<u>the Court so holds that the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: *one*, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and *two*, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.</u>** *(Emphasis supplied)*

Guided by the foregoing, a review of the Pre-Trial Order dated September 13, 2022,[140] which governed the trial between the parties, is in order. A perusal thereof reveals the following stipulated issues:

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[139] G.R. No. 249153, September 12, 2022.
[140] Division Docket, p. 1429.

1. Whether the Taxable Year (TY) 2012 Warrant of Distraint and/or Levy (WDL) issued by respondents and the alleged TY 2012 Income Tax (IT) Assessment sought to be satisfied, in the total amount of Thirty-Nine Million Three Hundred Eighty-Seven Thousand Three Hundred Sixty-Seven Pesos and Eighty-Four Centavos (Php39,387,367.84), inclusive of surcharge and interests, covering NEECO1's TY 2012 should be declared illegal and immediately cancelled; and

2. Whether the TY 2013 WDL issued by respondents and the alleged TY 2013 IT Assessment sought to be satisfied, in the total amount of Forty-One Million Five Hundred Ten Thousand Four Hundred Seventeen Pesos and Thirty Centavos (Php41,510,417.30), plus surcharge and interests, covering NEECO1's TY 2013, should be declared illegal and immediately cancelled.

As can be gleaned therefrom, the core issue between the parties is basically whether or not the 2012 WDL and 2013 WDL, and the respective assessments sought to be satisfied by the same, are illegal.

It cannot be denied by any logical reasoning that the broad issue on the legality or illegality of the subject WDLs and corresponding assessments, necessarily encompasses and is in fact inextricably intertwined with the issue on the taxpayer's due process rights which directly affects the validity of such assessments. Surely, looking into the legality or illegality of the subject assessments imports the necessity of determining the matter of the proper issuance of the said assessments in accordance with the requirements of due process as provided by law and jurisprudence.

As tax assessments issued in violation of the due process rights of a taxpayer are null and void and of no force and effect,[141] the Court *a quo* was actually duty-bound to first look into the validity of the subject LOAs and assessments, **on the basis of evidence already on record**, before ultimately ruling on NEECO1's liability for the deficiency assessments and the propriety of the resulting WDLs.

Given that the issue on NEECO1's due process rights was not only related to, but impliedly included in, or inferable by necessary implication from the issues stipulated in the Pre-Trial Order dated September 13, 2022, the CIR cannot now plausibly argue that he was denied the opportunity to be heard on the matter. In truth, he was given all the chances to present arguments, submit evidence, and defend his position thereon had he been vigilant of his rights considering the unmistakably broad scope of the stipulated issues.

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[141] *National Power Corp. v. Province of Pampanga*, G.R. No. 230648 (Resolution), October 6, 2021.

Neither can the CIR simply limit this Court's power, authority, and prerogative to touch upon the validity of the subject LOAs and assessments, for mere failure of NEECO1 to raise such issues in its protests to the PAN and FAN, there being no basis in law for limitation.

All things considered, We find no compelling reason to reconsider, modify or reverse the assailed Decision and Resolution.

WHEREFORE, premises considered, the *Petition for Review* docketed as CTA EB No. 2930 is **DENIED** for lack of merit; while the *Petition for Review* docketed as CTA EB No. 2931 is **DISMISSED** for lack of jurisdiction.

Accordingly, the *Decision* dated November 13, 2023 and *Resolution* dated May 27, 2024, in connection with CTA Case Nos. 10587 & 10632, are **AFFIRMED.**

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, I join the Concurring and Dissenting Opinion of Justice Jean Marie A. Bacorro-Villena)
LANEE S. CUI-DAVID
Associate Justice

(With due respect, I join the Concurring and Dissenting Opinion of Justice Jean Marie A. Bacorro-Villena)
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NUEVA ECIJA I ELECTRIC COOPERATIVE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and REGIONAL DIRECTOR OF REVENUE REGION NO. 4 CITY OF SAN FERNANDO, PAMPANGA OF THE BUREAU OF INTERNAL REVENUE,
Respondents.

CTA EB No. 2930
(CTA Case Nos. 10587 & 10632)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

NUEVA ECIJA I ELECTRIC COOPERATIVE, INC.,
Respondent.

CTA EB No. 2931
(CTA Case Nos. 10587 & 10632)

Present:

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

Promulgated:
MAY 2 1 2026 4:16 p.m.

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

The draft *ponencia* recommends the dismissal of EB Case No. 2931 for lack of jurisdiction and the denial of EB Case No. 2930 for lack of merit. While I concur with the recommended action for EB Case No. 2391, respectfully, I register my dissent on EB Case No. 2930 as there appears a different interpretation on the income tax (**IT**) exemption of electric cooperatives (**ECs**) under Presidential Decree (**PD**) No. 269.[1]

With due respect, contrary to the *ponencia*'s declaration, ECs registered with National Electrification Authority **(NEA) enjoy permanent IT exemption pursuant to Section 39(a) of PD 269**. The decree further provided certain incentives for ECs as embodied in Section 39 thereof, to wit –

> ...
>
> **SEC. 39.** *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.* — Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:
>
> > (a) *Provided* that it operates in conformity with the purposes and provisions of this Decree, cooperative (1) **shall be permanently exempt from paying income taxes**, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (A) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (B) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as *provided* for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently

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[1] CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES.

> organized or converted under this Decree: *Provided*, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions *provided* for in this Decree.[2]
>
> ...

Subsequently President Corazon Aquino issued Executive Order (**EO**) No. 93, withdrawing all tax and duty exemptions of EC. Section 2 of the said law authorized the Fiscal Incentives Review Board (**FIRB**) to determine whether such previously withdrawn tax and/or duty exemptions should be restored.

On 14 July 1987, the FIRB issued Resolution No. 24-87, qualifying the tax exemption privilege of an EC. The said resolution took effect on 01 July 1987. Under its terms, income of ECs derived from (1) electric service operations, and (2) other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements, shall remain subjected to tax.

On 10 March 1990, Republic Act (**RA**) No. 6938 (or the Cooperative Code of the Philippines) was enacted allowing ECs to register under the Cooperative Development Authority (**CDA**) upon compliance with certain registration requirements and enjoy preferential tax treatments afforded to cooperatives. RA 6938 was further amended with the enactment of RA 9520 (otherwise known as the Philippine Cooperative Code of 2008).

On 07 May 2013, Congress enacted RA 10531[3] or the "National Electrification Administration Reform Act of 2013", which further amended PD 269. It is observed that RA 10531 retained the IT exemption granted to ECs under Section 39 of PD 269. Corollary, Section 18 thereof made a sweeping declaration that any issuances inconsistent with its provisions are repealed or modified accordingly –

> ...
>
> **SEC. 18.** *Repealing Clause.* – Article 132(3) of Republic Act No. 9520 and Section 30 of Republic Act No. 9136 (EPIRA) on NEA's authorized capital stock are hereby repealed. **Any other provision of law, presidential decree, executive order, or rules and regulations inconsistent with the provisions of this Act or with the rules and**

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2 Emphasis supplied and italics in the original text.
3 AN ACT STRENGTHENING THE NATIONAL ELECTRIFICATION ADMINISTRATION, FURTHER AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 269, AS AMENDED, OTHERWISE KNOWN AS THE "NATIONAL ELECTRIFICATION ADMINISTRATION DECREE".

> **regulations issued pursuant thereto are hereby repealed or modified accordingly.**[4]
>
> ...

From the foregoing, it appears that the conditional restoration of an ECs' IT exemption, under FIRB Resolution No. 24-87, was already disregarded in favor of fully restoring the benefits of ECs under PD 269.

In Revenue Memorandum Circular (**RMC**) No. 72-2003,[5] the Bureau of Internal Revenue (**BIR**) itself affirmed the unqualified IT exemption of ECs. The said circular provides:

> ...
>
> A. Electric Cooperatives (ECs) registered with the National Electrification Administration (NEA) are exempt from:
>
> ...
>
> 3. **Income taxes for which they are directly liable** [P.D. No. 269, Sec. 39 (a)(1)]; [6]
>
> ...

This treatment of ECs is further reflected in NEA Legal Advisory No. 18[7] wherein NEA affirmed that ECs registered with it are still exempt permanently from the payment of IT, maintaining the effectivity of Section 39 of PD 269. Such declaration is persuasive authority of contemporaneous construction deserving of weight. In *Lim Hoa Ting v. Central Bank of the Philippines,*[8] the Supreme Court explained the persuasive authority of contemporaneous construction in this wise:

> ...
>
> The practice and interpretive regulations by officers, administrative agencies, departmental heads and other officials charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of a statute.
>
> In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who are called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect.
>
> ...

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4 Emphasis supplied and italics in the original text.
5 Tax implications of Electric Cooperatives registered with the National Electrification Administration and Cooperative Development Authority.
6 Emphasis supplied.
7 Income Tax Exemption of Electric Cooperatives Organized under P.D. 269.
8 G.R. No. L-10666, 24 September 1958; Citations omitted.

> Another reason why contemporaneousness is an important factor is its bearing on the need for certainty and predictability in our tax laws. This is where the notion of the Court's function in the scheme of judicial tax administration, becomes important. A statute is enacted. A regulation is issued. It will, in the normal course of events, be five or six years, and very likely more, before the construction of the statute, in the light of the regulation, will come before the Supreme Court. In the meantime, people will go on living, and transactions will be conducted under the statute, perhaps all the transactions that are ever to be conducted under the statute. Thus, it seems that a strong argument can be conducted in favor of giving very heavy weight to a contemporaneous regulation, so that taxpayers may rely upon it and have some certainty that it will be followed by the courts.
>
> ...

The BIR's and NEA's conclusions are highly persuasive as they are consistent with RA 6938 insofar as it affirms continuous effectivity of the provisions of PD 269 as observed from Section 127 thereof and Section 122 of the same law (which seeks to harmonize the provisions of RA 6938 and PD 269), to wit:

> ...
>
> CHAPTER XVII
> Final Provisions
>
> **Sec. 122. *Electric Cooperatives*.** – Electric cooperatives shall be covered by this Code. However, there shall be a transition period of three (3) years within which the Cooperative Development Authority and the National Electrification Administration shall help and assist electric cooperatives to qualify under this Code. The Cooperative Development Authority and the National Electrification Administration shall jointly promulgate rules and regulations to the end that the provisions of this law are harmonized with the provisions of Presidential Decree No. 269.
>
> ...
>
> **Sec. 127. *Repeals*.** - Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provision of this Code shall be deemed repealed: *Provided*, however, That **nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269**: *Provided further*, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof.[9]
>
> ...

[9] Italics and emphasis in the original text and supplied.

The subsequent enactment of RA 10531 further reinforces the legislative intent to maintain the efficacy of the provisions of PD 269.

Notably, the permanent IT exemption of ECs, without the qualifications from FIRB Resolution No. 24-87, has already been affirmed by the Supreme Court in *Samar-I Electric Cooperative v. Commissioner of Internal Revenue.*[10] Even if the Supreme Court no longer tackled the issue of the SAMELCO-I's exemption from payment of IT in the body of the decision, the Supreme Court still affirmed the *En Banc*'s Decision in CTA EB Case Nos. 460 and 462 (CTA Case No. 6697). We quote the relevant ruling of the Court in Division, which was later on affirmed by the CTA *En Banc* and the Supreme Court:

> ...
> If the electric cooperative chose to register under the Cooperative Code, then they shall be governed by the Cooperative Code and be entitled to the benefits it carries; otherwise, they remain to be governed by PD 269. Not being governed by the Cooperative Code, it is not required to be registered with the Cooperative Development Authority in order to avail itself of the tax exemptions.
>
> Anent FIRB Resolution 24-87 which restored tax incentives of electric cooperatives **except, among others, with respect to income from electric operations**; it must be remembered that the FIRB was created by Presidential Decree No. 776 on August 24, 1975. Among other things, the Board was tasked as follows:
> ...
>
> Initially, the FIRB only had recommendatory powers. However, EO No. 93 was issued amending PD 776; giving the FIRB, among others, the power to restore tax exemptions.
>
> **Be that as it may, Resolution 24-87 cannot reign over the Cooperative Code. Resolution 24-87 is a mere resolution issued by a body created under the Office of the President; while the Cooperative Code is a statute enacted by Congress, which is the body empowered to create laws.**
>
> With all the foregoing, this Court upholds the tax exemption of petitioner from MCIT. Considering this resolution, this Court will now settle only those issues related to the withholding tax liability of petitioner.[11]
> ...

[10] G.R. No. 193100, 10 December 2014.
[11] CTA Case No. 6697, 27 May 2008; Citations omitted, emphasis in the original text and supplied.

Accordingly, ECs should be permanently exempt from IT without any qualifications as to the nature of income they will be receiving. FIRB Resolution No. 24-87 should not prevail over the Cooperative Code.

Notwithstanding the above disquisition, considering that the BIR committed several procedural lapses (during the audit) that violated Nueva Ecija I Electric Cooperative, Inc.'s right to due process, the tax assessments issued against it became null and void.

All told, I vote to **GRANT** CTA EB No. 2930 and modify the Special First Division's Decision of 13 November 2023 and the Resolution of 27 May 2024 insofar as the discussion on the electric cooperatives' permanent exemption from income tax under Presidential Decree No. 269 is concerned; and to **DISMISS** CTA EB No. 2931 for lack of jurisdiction.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice