REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BENGUET ELECTRIC COOPERATIVE, INC. (BENECO), represented by GERARDO P. VERZOSA, General Manager, Petitioner,	CTA Case No. 9967
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
THE COMMISSIONER ON INTERNAL REVENUE, Respondent.	Promulgated: SEP 11 2023 1:00 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Benguet Electric Cooperative, Inc. (**petitioner/BENECO**) pursuant to Section 3(a)[2], Rule 8, in relation to Section 3(a)(1)[3], Rule 4, of the Revised Rules of the Court

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[1] Filed on 30 October 2018, Division Docket, pp. 10-20.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(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

of Tax Appeals[4] (**RRCTA**). It seeks to set aside and annul the Final Decision on Disputed Assessment (**FDDA**), dated 15 March 2018[5], assessing petitioner for deficiency minimum corporate income tax (**MCIT**) for taxable year (**TY**) 2015 in the amount of ₱12,125,301.16.

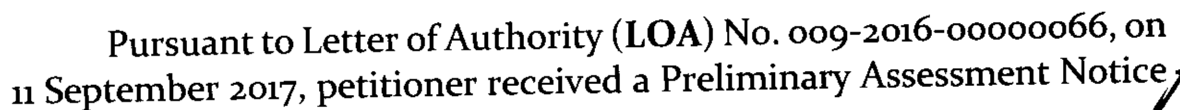
PARTIES OF THE CASE

Petitioner is an electric distribution utility with principal office address at No. 4, Barangay South Drive, Baguio City. It is a non-stock and non-profit electric cooperative duly organized by virtue of Presidential Decree (**PD**) No. 269[6] with an exclusive franchise issued by the National Electrification Administration (**NEA**) to operate an electric light and power distribution service for Baguio City and the 13 municipalities of *Benguet, i.e., Atok, Bakun, Bokod, Buguias, Kabayan, Kapangan, Kibungan, Itogon, La Trinidad, Mankayan, Sablan, Tuba,* and *Tublay.*[7]

On the other hand, respondent Commissioner of Internal Revenue (**respondent/CIR**) is the head of the Bureau of Internal Revenue (**BIR**) with the power or authority to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, and holds office at BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS OF THE CASE

Pursuant to Letter of Authority (**LOA**) No. 009-2016-00000066, on 11 September 2017, petitioner received a Preliminary Assessment Notice



matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

...

4 A.M. No. 05-11-07-CTA dated 22 November 2005.

5 Exhibit "P-5", Division Docket, pp. 265-271.

6 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.

7 Paragraph (Par.) 1, Petition for Review, supra at note 1.

(**PAN**) with Details of Discrepancies dated 30 August 2017[8], assessing it with deficiency MCIT for TY 2015 in the amount of ₱10,498,195.57 based on Revenue Memorandum Circular (**RMC**) No. 74-2013.[9] The PAN was issued by Officer-in-Charge Regional Director (**OIC-RD**) Conrado C. Lee (**Lee**) of the BIR Cordillera Administrative Region (**BIR-CAR**), Revenue Region No. 2.

Subsequently, on 12 October 2017, respondent issued an Amended PAN[10] with Details of Discrepancies assessing petitioner with higher deficiency MCIT of ₱12,027,468.86.

Later, or on 06 November 2017, petitioner received the Formal Letter of Demand/[Final] Assessment Notice (**FLD/FAN**) with Details of Discrepancies dated 25 October 2017[11], demanding payment of deficiency MCIT ₱12,125,301.16 after interest adjustment.

On 05 December 2017, petitioner filed a "Motion for Reconsideration (By Way of Protest to the Final Letter of Demand [FLD]/[Final] Assessment Notice [FAN])"[12] and argued that it is exempted from payment of income tax and that respondent's assessment is irregular and unconstitutional. In addition, petitioner claimed that respondent's basis, *i.e.*, RMC No. 74-2013, is invalid because it was issued based on the erroneous assumption that the tax exemptions under Section 39[13] of PD 269[14] were effectively withdrawn by PD 1955[15] and Executive Order (**EO**) No. 93.[16]

As a response to petitioner's protest, on 15 March 2018, respondent (through OIC-Assistant RD Douglas A. Rufino [**OIC-ARD Rufino**])

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8 Exhibit "P-1", Division Docket, pp. 237-238.

9 Circularizing the tax implications of Electric Cooperatives (EC) registered with the National Electrification Administration (NEA) pursuant to BIR Ruling No. 398-2013 dated November 4, 2013.

10 Exhibit "P-2", Division Docket, pp. 239-240.

11 Exhibit "P-3", id., pp. 241-242.

12 Exhibit "P-4", id., pp. 243-253.

13 SEC. 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation. ...*

14 Supra at note 6.

15 WITHDRAWING, SUBJECT TO CERTAIN CONDITIONS, THE DUTY AND TAX PRIVILEGES GRANTED TO PRIVATE BUSINESS ENTERPRISES AND/OR PERSONS ENGAGED IN ANY ECONOMIC ACTIVITY, AND FOR OTHER PURPOSES.

16 WITHDRAWING ALL TAX AND DUTY INCENTIVES, SUBJECT TO CERTAIN EXCEPTIONS, EXPANDING THE POWERS OF THE FISCAL INCENTIVES REVIEW BOARD AND FOR OTHER PURPOSES.

issued the Final Decision on Disputed Assessment[17] (**FDDA**) which petitioner received on 27 March 2018.

Opting for an administrative remedy, on 25 April 2018, petitioner filed an "Appeal (on the Final Decision on Disputed Assessment of the Regional Director)"[18] (**Appeal on the FDDA**) with the CIR's office. Pending the CIR's action on its appeal, petitioner filed the instant Petition for Review[19] before this Court on 30 October 2018.

PROCEEDINGS BEFORE THE COURT

After several extensions of time were granted[20], on 08 February 2019, respondent filed his or her Answer[21] and interposed that petitioner is not exempted from payment of taxes because it failed to provide any certification for its alleged exemption. Section 39 of PD 269 also states categorically that electric cooperatives, such as petitioner, enjoy income tax exemptions for a period of 30 years only. Upon the lapse of the said period, the exemption shall cease. In petitioner's case, the 30-year period ended on 05 October 2003, hence it already lost its privilege.

Respondent likewise contended that RMC No. 74-2013 is a valid legal basis since it adopts the Fiscal Incentive Review Board's (**FIRB**'s) determination of the taxability of electric cooperatives (as laid down in FIRB Resolution No. 024-87[22]). Similarly, the FDDA is valid because it

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17 Exhibit "P-5", Division Docket, pp. 265-271.

18 Exhibit "P-5A", id., pp. 279-287; BIR Records, pp. 683-692.

19 Supra at note 1.

20 See Resolution dated 05 December 2018, Division Docket, p. 53; Resolution dated 20 December 2018, id., p. 59; and Order dated 06 February 2019, id., p. 64.

21 Id., pp. 65-72.

22 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.

was issued by the CIR's duly authorized representative through OIC-ARD Rufino.

After an unsuccessful mediation[23], the case was set for pre-trial conference. Petitioner and respondent filed their Pre-Trial Briefs on 07 October 2019[24] and 07 February 2020[25], respectively.

After the pre-trial conference[26], respondent transmitted to the Court the BIR Records of the case with one (1) folder consisting of 699 pages.[27] Subsequently, the Court issued the Pre-Trial Order on 22 June 2020.[28] Thereafter, trial ensued.[29]

On 26 January 2021, petitioner presented as its lone witness, Rowina MC. Damian (**Damian**) who testified, by way of her Judicial Affidavit[30], stating that: (1) she is the Accounting Associate under the Non-Network Services Department of BENECO; (2) petitioner is exempted from income tax pursuant to Section 39 of PD 269; (3) the 30-year expiration period under the said provision is applicable to other taxes and not to income taxes; (4) as proof of its exemption, a letter reply[31] from then ACIR James H. Holdan (**Holdan**) declares that petitioner is permanently exempted from income tax; (5) this Court ruled in Court of Tax Appeals (**CTA**) Case No. 9376[32] that electric cooperatives are permanently exempted from payment of income taxes; (6) as a non-stock, non-profit cooperative, petitioner does not earn profit or gain from its operations, hence there is no income to be taxed; (7) should petitioner be subjected to the payment of income taxes, it must be based on the distribution, supply and metering (**DSM**) charges only; (8) petitioner should not be liable for income taxes assessed on other charges (referred to as "Pass Through" charges) that are remitted to different government agencies; and, (9) petitioner is liable for

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23 Mediator's Report dated 04 July 2019, Division Docket, p. 85.
24 Id., pp. 94-99.
25 Id., pp. 122-124.
26 See Order dated 11 February 2020, id., pp. 131-132.
27 See Compliance filed on 11 February 2020, id., pp. 134-136.
28 Id., pp. 155-159.
29 See Order dated 26 January 2021, id., pp. 226-227.
30 Exhibit "P-14", id., pp. 101-112.
31 Exhibit "P-6", id., pp. 288-290.
32 *Agusan Del Norte Electric Cooperative, Inc. v. Commissioner of Internal Revenue, et al.*, 05 August 2019. Raffled to Special First Division. Penned by Associate Justice Cielito N. Mindaro-Grulla (Ret.) and concurred by Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy (Ret.)

deficiency MCIT in the amount of ₱2,595,414.00 as opposed to the alleged deficiency taxes of ₱12,125,301.16 (reflected in the FDDA).

Respondent did not conduct a cross-examination and admitted the due execution and existence of all of petitioner's exhibits as enumerated in the Pre-Trial Order. Moreover, respondent manifested that he or she will no longer present any evidence. Accordingly, the Court ordered the parties to file the necessary pleadings.[33]

On 10 February 2021, petitioner filed its "Formal Offer of Evidence with Manifestation"[34] (**FOE**), to which respondent filed his or her "Comment (Re: Formal Offer of Evidence with Manifestation)"[35] on 05 March 2021. In the Resolution dated 08 July 2021[36], the Court admitted all of petitioner's documentary evidence, except Exhibit "**P-5A**" [37] for failure of its witness to identify it.

Later, petitioner filed its Memorandum[38] on 17 August 2022. Following respondent's failure to file his or her memorandum within the allowed period[39], the Court submitted the case for decision.[40]

ISSUES

As agreed during the pre-trial conference, the issues for this Court's resolution are as follows[41]:

I.
WHETHER PETITIONER BENGUET ELECTRIC COOPERATIVE (BENECO) IS LIABLE FOR DEFICIENCY INCOME TAX; AND,

II.
WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S (CIR'S) ASSESMENT AND COMPUTATION OF DEFICIENCY INCOME TAX IS CORRECT.

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33 Supra at note 28.
34 Division Docket, pp. 231-236.
35 Id., pp. 389-391.
36 Id., pp. 402-404.
37 Offered as Appeal to the FDDA.
38 Division Docket, pp. 407-425.
39 See Records Verification dated 01 September 2022, id., p. 427.
40 See Resolution dated 13 September 2022, id., p. 428.
41 See Pre-Trial Order, supra at note 28.

ARGUMENTS

Petitioner argues that a plain reading of Section 39 of PD 269 would conclude that electric cooperatives are exempted from paying income taxes, 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 cooperatives is necessary and appropriate:
>
> (a) Provided that it operates in conformity with the purposes and provisions of this Decree, a 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 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.
>
> ...

According to petitioner, the first statement (granting the income tax exemption) should be read and treated separately from the second statement as the former applies to income taxes; while in the latter statement, the 30-year prescriptive period relates to other taxes as enumerated above. To bolster its contention, petitioner cites CTA Case No. 9376[42], as affirmed in *En Banc* Case No. 2225[43], where the Court ruled

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[42] Supra at note 32.

[43] *Commissioner of Internal Revenue v. Agusan del Norte Electric Cooperative, Inc.*, 22 March 2022. Penned by Associate Justice Juanito C. Castañeda, Jr. (Ret.).

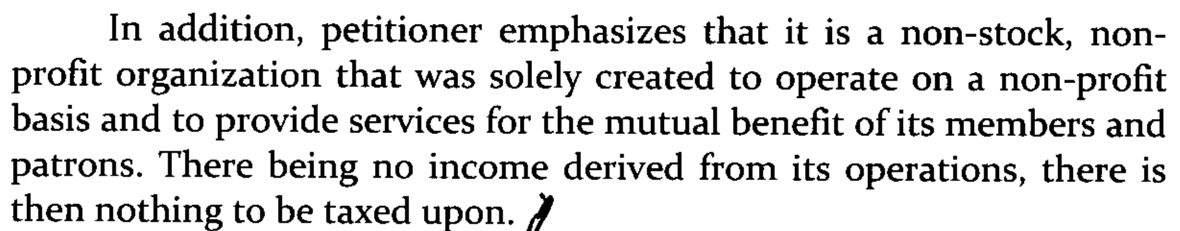
that electric cooperatives are exempted from MCIT pursuant to Section 39 of PD 269.

Moreover, petitioner claims that RMC No. 74-2013 is not a sufficient legal basis to assess petitioner with income taxes. The case of *Davao Oriental Electric Cooperative, Inc. v. The Province of Davao Oriental*[44] (**DORECO**) cited in the said RMC pertains to real property taxes and not to income taxes. There is thus no basis for respondent to circularize the import of *DORECO vis-à-vis* RMC No. 74-2013 since both involve different taxes.

Additionally, petitioner explains that PD 1955 and EO No. 93 (which respondent alleges to have effectively withdrawn the tax privileges of electric cooperatives) is directed towards private business entities. According to it, nothing in the said issuances suggest that they also apply to non-stock, non-profit entities, such as petitioner. Thus, contrary to respondent's discussion in the Amended PAN, FLD/FAN, and FDDA, the exemptions granted to electric cooperatives under Section 39 of PD 269 were never revoked nor repealed.

Petitioner further refers to Republic Act (**RA**) No. 10531[45] or the National Electrification Administration Reform Act of 2013, to prove that electric cooperatives registered with the NEA are granted additional incentives under the Local Government Code (**LGC**) of 1991, as amended, apart from the income tax exemption under Section 39 of PD 269. Thus, clear from the import of these laws are the permanent exemption from income taxes and other preferential tax treatment granted to electric cooperatives to assist them in their operations.

In addition, petitioner emphasizes that it is a non-stock, non-profit organization that was solely created to operate on a non-profit basis and to provide services for the mutual benefit of its members and patrons. There being no income derived from its operations, there is then nothing to be taxed upon.



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[44] G.R. No. 170901, 20 January 2009.

[45] 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".

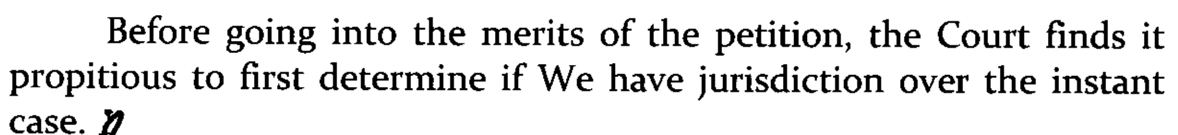
Petitioner also asserts that pursuant to Energy Regulatory Commission (**ERC**) Resolution No. 20-09[46], NEA adopts the Cash Flow methodology in computing the tariff rates that electric cooperatives collect from their consumers such as: (1) debt service - allowable loans obtained from financial institutions; (2) reinvestment fund - allowance used to finance capital expenditure; (3) payroll - updated salaries plus allowable benefits; and, (4) operating and maintenance expenses. It claims that there is no provision for cash collection allotted for any income tax payment.

Referring to the conduct of trial, petitioner stresses that respondent did not cross-examine its lone witness nor presented any rebuttal evidence, thus he or she does not contest its income tax exemption.

Assuming arguendo that petitioner may be held liable for MCIT, respondent's tax base is deemed flawed because it has been based on the gross revenue. According to petitioner, the Pass Through charges of generation, transmission, universal charges, standard contract costs, and value-added tax (**VAT**) should have been excluded and the assessment should have been based on the DSM (referred also as "Pass On" charges) only. Petitioner also argues that after collection, the Pass Through charges are remitted to the concerned government agencies and it only retains the Pass On charges. Moreover, petitioner insists that respondent should compute MCIT on gross income after the cost of services are deducted. Contrary to respondent's belief that petitioner is engaged in the sale of goods, it posits that it is a service utility that delivers electricity to end-users; thus, it is engaged in sales of services. Respondent then should also have considered deducting the cost of services to arrive at the proper tax base.

RULING OF THE COURT

Before going into the merits of the petition, the Court finds it propitious to first determine if We have jurisdiction over the instant case.



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46 A RESOLUTION ADOPTING THE RULES FOR SETTING THE ELECTRIC COOPERATIVES' WHEELING RATES.

THE COURT HAS NO JURISDICTION OVER THE CASE.

At the outset, it bears to emphasize that the CTA, being a court of special and limited jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[47] Section 7(a)(1) of RA 1125[48], as amended, provides:

> ...
> **Sec.** 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **<u>Decisions</u>** of the Commissioner of Internal Revenue in cases involving **<u>disputed assessments</u>**, 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[.][49]
> ...

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with the legal requirements is fatal to a party's cause.[50]

On the period to appeal to this Court, if a decision on the protest is denied in whole or in part by the CIR, Section 228 of the NIRC of 1997, as amended, in part, clearly reads as follows:

> ...
> **SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings[.] ...
> ...

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47 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

48 AN ACT CREATING THE COURT OF TAX APPEALS.

49 Emphasis and underscoring supplied.

50 *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

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

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

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from <u>receipt</u> of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[51]

...

The aforequoted Section 228 is implemented by Revenue Regulations (RR) No. 12-99[52], as amended by RR No. 18-2013[53], issued on 28 November 2013. Relevant portions of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provide the taxpayer's options on disputed assessments, to wit:

...

Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

...

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

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

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[51] Italics in the original text, emphasis and underscoring supplied.

[52] 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.

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

of additional evidence. It may involve both a question of fact or of law or both.

(ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

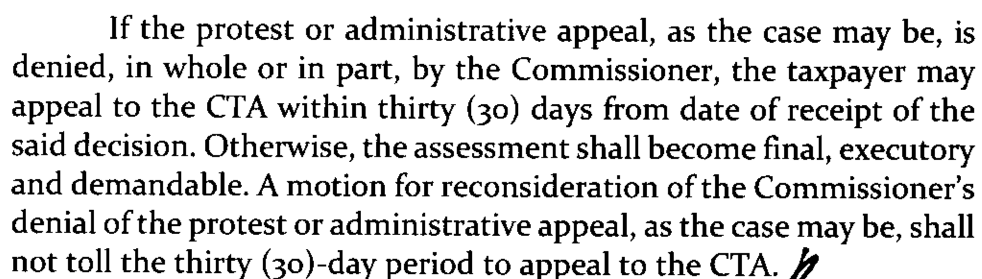
...

For request for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. ...

...

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or **(ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision**. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.



If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

> **If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may <u>either</u>: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.**
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.[54]
>
> ...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[55] (**PAGCOR**) and, later on, in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[56], explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

> ...
>
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
> 1. **If the protest is wholly or partially denied by the CIR <u>or</u> his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.

[54] Italics in the original text, emphasis and underscoring supplied.
[55] G.R. No. 208731, 27 January 2016; Citation omitted, italics, emphasis and underscoring in the original text and supplied.
[56] G.R. No. 221780, 25 March 2019.

> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
>
> ...

To avoid confusion, the Supreme Court in *PAGCOR*[57] further summarized the rules in the following wise:

> ...
>
> To further clarify the three options: **A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA.** A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. **There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.**
>
> ...

Based on the foregoing provisions and jurisprudence, in cases where a taxpayer's protest is denied by the CIR's duly authorized representative, a taxpayer is given two (2) alternative remedies, to either: (1) appeal to the CTA within 30 days from the date of receipt of the representative's decision; or, (2) to elevate its protest through a request for reconsideration to the CIR, within the same 30-day period, otherwise referred to as an "administrative appeal."

Thereafter, if the taxpayer's administrative appeal is not acted upon by the CIR within 180 days from the filing of the protest, the concerned taxpayer may either: (1) appeal to the CTA within 30 days after the expiration of the said 180-day period; or, (2) await the final decision of the CIR on the disputed assessment, and appeal such final decision to the CTA within 30 days from receipt of a copy thereof.

As culled from the records, the following are the pertinent dates in determining the timeliness of the Petition for Review:

[57] Supra at note 55; Emphasis supplied.

Date	Action
06 November 2017[58]	Petitioner received the FLD/FAN dated 25 October 2017, signed by then OIC-RD Lee.[59]
05 December 2017[60]	Respondent received petitioner's "Motion for Reconsideration (By Way of Protest to the Final Letter of Demand/[Final] Assessment Notice)" dated 04 December 2017, requesting for reconsideration of the FLD/FAN, filed within the 30-day reglementary period.
15 March 2018[61]	**After 100 days from the receipt of petitioner's protest,** respondent issued the FDDA signed by then OIC-ARD Rufino. The same was received by petitioner on 27 March 2018.[62]
25 April 2018[63]	Petitioner elevated the FDDA to the CIR (through an Appeal on the FDDA) within the 30-day reglementary period.
14 July 2018	**End of the remaining 80 days of the 180-day period from the filing of administrative appeal before the CIR.**
13 August 2018	**End of the 30-day period to file a judicial appeal before this Court.**
30 October 2018[64]	**Petitioner filed a Petition for Review before this Court.**

In this case, petitioner opted to file an administrative appeal, through an Appeal on the FDDA, before respondent on 25 April 2018. On the belief that it was granted a fresh period of 180 days from 25 April 2018, petitioner claimed that the said period lapsed on 22 October 2018. Counting 30 days therefrom, petitioner alleged that the Petition for Review filed on 30 October 2018 was filed within the reglementary period.

To be clear, the 180-day period referred to in Section 228 of the NIRC of 1997, as amended, and in Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, is confined only to the period within which either the CIR or his or her duly authorized representative may act on the initial protest against the FLD/FAN. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative,

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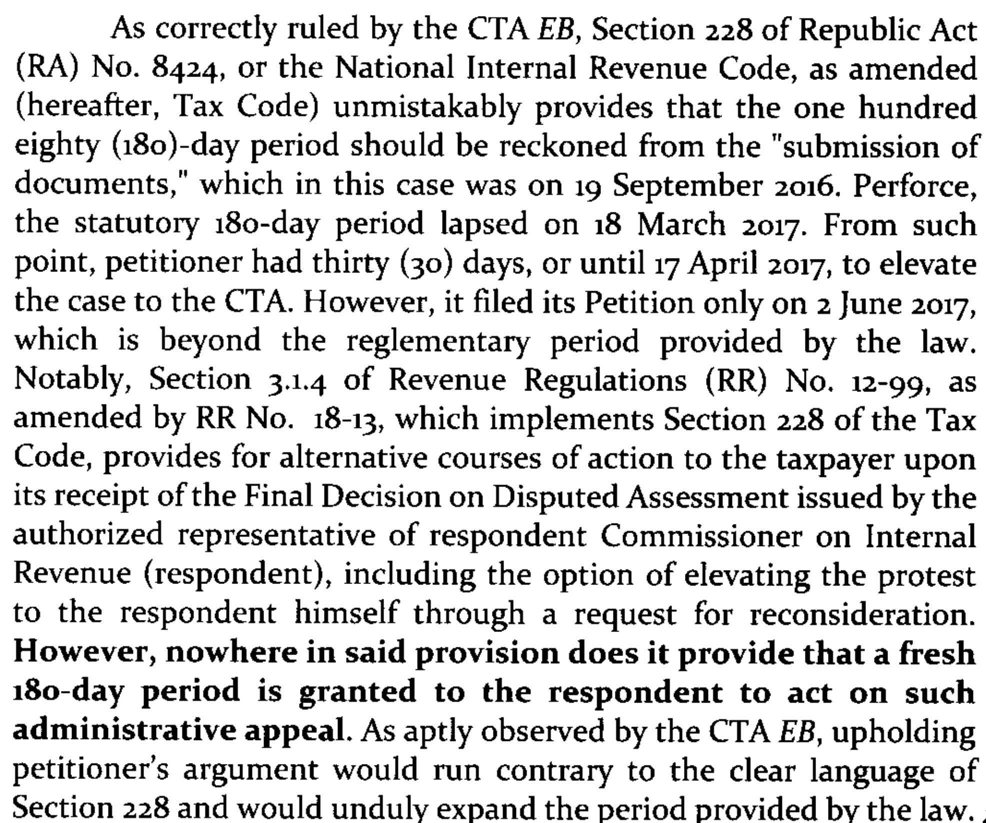
58 Par. 2, Division Docket, p. 11; Exhibit "P-4", id., p. 243.
59 Exhibit "P-3", supra at note 11.
60 Exhibit "P-4", supra at note 12.
61 Exhibit "P-5", supra at note 17.
62 Par. 5, Division Docket, p. 11.
63 Exhibit "P-5A", supra at note 18.
64 Petition for Review, supra at note 1.

the taxpayer's remaining option is to wait for the CIR's decision before elevating its case to the CTA. In other words, when a taxpayer opts to file an administrative appeal, the CIR is not given a fresh or separate 180-day period within which to decide the administrative appeal.

In line with the rules set forth in RR No. 12-99, as amended by RR No. 18-2013, and the ruling in *PAGCOR*, petitioner could already file its Petition for Review before this Court within 30 days from receipt of the FDDA on 27 March 2018, or until **26 April 2018** (as the FDDA already served as respondent's denial of its protest). Unfortunately, petitioner opted to file an administrative appeal against the FDDA before respondent. Then, without waiting for any action from respondent, petitioner filed the instant Petition for Review before this Court on 30 October 2018.

In a recent case of *Nueva Ecija II Electric Cooperative, Inc. Area II (NEECO II Area II) v. Commissioner of Internal Revenue*[65], the Supreme Court declared categorically that there is no new or separate 180-day period granted to the CIR to act on the administrative appeal, to wit:



> ...
>
> As correctly ruled by the CTA *EB*, Section 228 of Republic Act (RA) No. 8424, or the National Internal Revenue Code, as amended (hereafter, Tax Code) unmistakably provides that the one hundred eighty (180)-day period should be reckoned from the "submission of documents," which in this case was on 19 September 2016. Perforce, the statutory 180-day period lapsed on 18 March 2017. From such point, petitioner had thirty (30) days, or until 17 April 2017, to elevate the case to the CTA. However, it filed its Petition only on 2 June 2017, which is beyond the reglementary period provided by the law. Notably, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for alternative courses of action to the taxpayer upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of respondent Commissioner on Internal Revenue (respondent), including the option of elevating the protest to the respondent himself through a request for reconsideration. **However, nowhere in said provision does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal.** As aptly observed by the CTA *EB*, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law.

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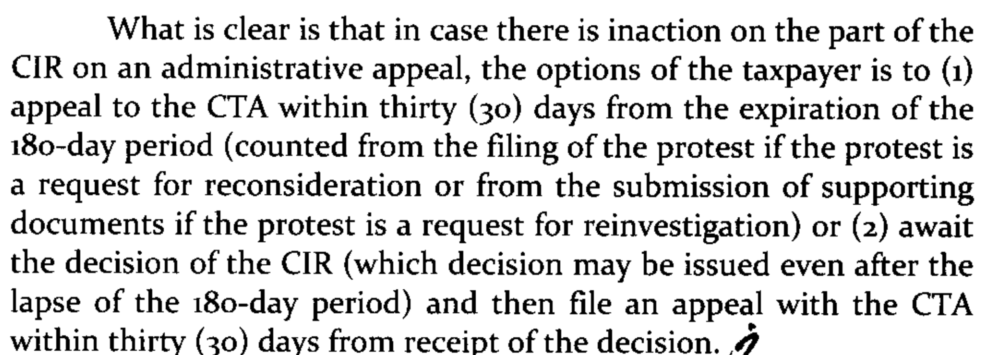
65 G.R. No. 258101, 19 April 2022 (Resolution); Citations omitted and emphasis supplied.

> Necessarily, taxpayers must exercise their rights in the manner and within the periods provided by statute and the pertinent regulations. **"It bears to stress that the perfection of an appeal within the statutory period is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review."**
>
> ...

The Court *En Banc* echoed the foregoing declarations in the case of *Larry E. Segaya/Les Engineering and Construction v. Commissioner of the Bureau of Internal Revenue*[66] where We stated —

> ...
>
> In determining the timeliness of an appeal from the inaction of the CIR, a plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99, as amended, reveals that there is only **one (1) "180-day period" of inaction** to speak of which shall be counted from the date of filing of the protest (if the protest is a request for reconsideration) or from the submission of the relevant supporting documents (if the protest is a request for reinvestigation) and not from the date when the decision of the CIR's authorized representative was appealed to the CIR.
>
> *There is nothing in Section 228 of the NIRC of 1997, as amended and RR No. 12-99, as amended, which provides for a separate 180-day period for the CIR's representative to act on the protest and another 180-day period for the CIR to decide the appeal on the decision rendered by the CIR's authorized representative for the purpose of computing the 30-day period within which to appeal to the CTA.*



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

66 CTA EB No. 2526, 13 December 2022; Emphasis and underscoring in the original text and italics supplied.

As can be gleaned from the foregoing pronouncements, there is a singular 180-day period, *i.e.*, the period counted from the filing of the protest or the submission of the required documents. Accordingly, if an authorized representative of the CIR denies the protest within the 180-day period and the taxpayer appeals to the CIR, the CIR has the **remainder of the 180-day period within which to act.** And if there is no action, the taxpayer may appeal to this Court within **30 days after the lapse of the said remaining period.** It also follows that if the taxpayer **waits for the decision of the CIR's representative and the same is issued after the lapse of the 180-day period**, the same may be appealed to this Court. In the latter case, **the 180-day period is no longer a consideration** and the only remedy for the taxpayer is **to wait for the CIR's decision before elevating its case to the CTA, if the same is not favorable.**

Considering that about 100 days of the 180-day period have already lapsed by the time respondent issued the FDDA on 15 March 2018, respondent CIR only had 80 days from petitioner's filing of the administrative appeal to act, *i.e.*, until 14 July 2018. After the lapse of such period, there is already an inaction on the part of respondent CIR and petitioner should have filed a judicial appeal before this Court within 30 days from the lapse of the remaining 80 days of the 180-day period, *i.e.*, from **14 July 2018 to 13 August 2018.** However, petitioner only filed a judicial appeal before this Court on 30 October 2018.

We are not unaware that the Appeal on the FDDA offered as Exhibit "**P-5**" was denied admission for failure of petitioner's witness to identify it. Nonetheless, We have observed that an original thereof was included in the BIR records[67], thus We deemed it proper to consider the said evidence in the determination of Our jurisdiction. As ruled in *Commissioner of Internal Revenue v. Jerry Ocier*[68], We have the positive duty as a court of law to consider and give due regard to everything on record that is relevant and competent to Our resolution of the issue presented for adjudication. We cannot turn a blind eye and disregard matters that are relevant for Our disposition simply because they were not formally offered by the parties.[69]

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67 BIR Records, pp. 683-692.
68 G.R. No. 192023, 21 November 2018.
69 Id.

Basic is the rule that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint.[70] Thus, the limits of this Court's jurisdiction is unaffected by petitioner's erroneous interpretation of the law. In *Glynna Foronda-Crystal v. Aniana Lawas Son*[71], the Supreme Court aptly stated - "[i]n **law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution.**" In thus losing our authority to review the subject deficiency assessment, this Court sees no relevant need to further tackle the parties' other issues as these will not change the outcome of the case.

WHEREFORE, in view of the foregoing, the Petition for Review filed by petitioner Benguet Electric Cooperative, Inc. (BENECO), represented by Gerardo P. Verzosa, General Manager on 30 October 2018 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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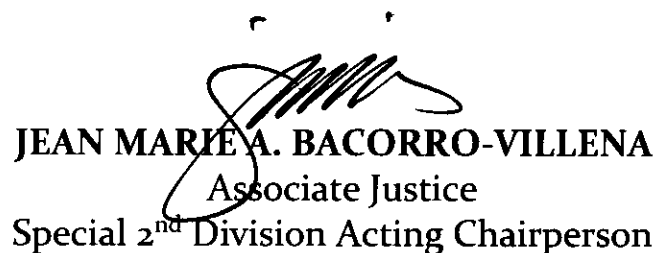
70 *Editha Padlan v. Elenita Dinglasan, et al.*, G.R. No. 180321, 20 March 2013.
71 G.R. No. 221815, 29 November 2017.

ATTESTATION

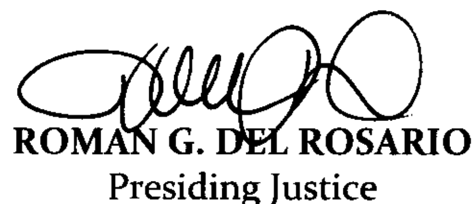
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, 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's Division.



ROMAN G. DEL ROSARIO
Presiding Justice