**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

*EN BANC*

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| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **CTA EB NO. 2225 (CTA CASE NO. 9376)** |
| | **Present:** |
| -versus- | DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, *and* CUI-DAVID, *JJ.* |
| **AGUSAN DEL NORTE ELECTRIC COOPERATIVE, INC.,** Respondent. | **Promulgated:** MAR 2 2 2022 4:05pm |

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## DECISION

*CASTAÑEDA, JR., J.:*

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) under Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA), which seeks to reverse the following:

1. August 5, 2019 Decision[1] of the CTA Special First Division[2] the dispositive portion of the decision reads:

"**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and value-added tax assessments issued by respondent against petitioner are **CANCELLED AND SET ASIDE**. 

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[1] Annex A, Petition for Review, *Rollo*, pp. 25-54.
[2] Penned by Associate Justice Cielito N. Mindaro-Grulla, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy.

**SO ORDERED.**"

2. January 21, 2020 Resolution[3] denying the CIR's Motion for Reconsideration for lack of merit.

## THE FACTS

The facts, lifted from the assailed decision and from the records of the case, are as follows:

### *The Parties*

Petitioner CIR is vested under the appropriate or pertinent laws with the authority to carry out the functions, powers, duties and responsibilities of their office, including, among others, the power to decide disputed assessments, and cancel and abate tax liabilities pursuant to and in accordance with the provisions and rules and regulations of the National Internal Revenue Code (NIRC) and other applicable laws.[4]

Respondent Agusan Del Norte Electric Cooperative, Inc. (ANECO) is a non-stock, non-profit electric cooperative duly organized, registered and existing in accordance with the provisions of Presidential Decree (PD) No. 269 (The National Electrification Administration Decree), with its principal office address located at J.C. Aquino Avenue, Butuan City.[5]

ANECO is also a holder of a Certificate of Franchise to operate an electric light and power service, as a distribution facility, in Butuan City and the Municipalities of Agusan del Norte until December 12, 2054, issued by the National Electrification Commission on July 29, 2005 (a renewal of its original Certificate of Franchise issued on December 12, 1979), and is a registered taxpayer of the Bureau of Internal Revenue-Revenue Region (BIR-RR) No. 17, Revenue District Office (RDO) No. 103, Butuan City with Tax Identification Number (TIN) 000-905-276-0000.[6]

### *Antecedents*

Taxpayer ANECO received on November 11, 2015 a copy of the Preliminary Assessment Notice (PAN) dated November 4, 2015 with Details of Discrepancies for calendar year (CY) 2012 issued by the BIR-RR No. 17 signed by respondent OIC Regional Director Nasser A. Tangcor (Tangcor)[7]

[3] Annex B, Petition for Review, *Rollo*, pp. 55-57.
[4] August 5, 2019 Decision, *Rollo*, p. 26.
[5] *Id.*
[6] *Id.*
[7] *Id.*, p. 27; Exhibit P-3, Division Docket, Vol. I, pp. 640-641.

On November 19, 2015, ANECO filed with the BIR its reply to the PAN dated November 18, 2015.[8]

Thereafter, ANECO received on February 29, 2016 the Formal Letter of Demand (FLD) with Details of Discrepancies and Audit Results/Assessment Notice appended thereto dated February 17, 2016.[9]

On March 14, 2016, ANECO then filed its protest to the FLD requesting for reconsideration/reinvestigation of the assessment.[10]

In a letter dated March 18, 2016 signed by Regional Director Tangcor and received by ANECO on March 22, 2016, the taxpayer was informed that, based on the legal opinion of the BIR's Legal Division, its request for reinvestigation was not given due course.[11]

The March 18, 2016 letter prompted the taxpayer to file a Protest (Request for Reconsideration) before the CIR on April 21, 2016.[12]

On May 10, 2016, the taxpayer received a copy of a 1st Indorsement dated May 5, 2016, addressed to the Revenue District Officer of RDO No. 103 and issued by the BIR-RR No. 17.[13]

On May 30, 2016, the taxpayer received a copy of the Final Decision on Disputed Assessment (FDDA) signed by Regional Director Tangcor.[14]

***CTA First Division***

Consequently, ANECO filed a Petition for Review with the court *a quo* on June 28, 2016.[15]

The CIR and OIC-Regional Director Nasser A. Tangcor separately filed their Answers on October 5, 2016 and August 22, 2016, respectively, interposing their respective affirmative defenses:

The CIR's Defenses:[16]

1. The petition is dismissible for failure to comply with condition precedent;

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[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] Division Docket, Vol. I, pp. 10-38.
[16] Answer, Division Docket, Vol. I, pp. 232-245.

2. ANECO failed to exhaust administrative remedies;

3. ANECO is liable for the assessed deficiency taxes; and,

4. The assessment issued against the taxpayer is valid and lawful.

OIC-Regional Director Nasser A. Tangcor alleged the following defenses:[17]

1. ANECO failed to exhaust administrative remedies;

2. ANECO's reliance on Section 39 of PD 269 as a tax shield is misplaced since the provision has been repealed/modified by PD 1955, PD 2008, Executive Order No. (EO) 93, Fiscal Incentive Regulatory Board (FIRB) No. 24-87;

3. BIR Ruling No. 398-2013 subjects electric cooperative to taxes on their income on electric service operations pursuant to FIRB No. 24-87, hence, ANECO is subject to income tax;

4. In *Davao Oriental Electric Cooperative, Inc. v. The Province of Davao Oriental* (G.R. No. 170901, January 20, 2009), the Supreme Court recognized the validity of FIRB No. 24-87;

5. ANECO is not registered with the Cooperative Development Authority (CDA) and, hence, liable for Value-Added Tax (VAT) on its gross receipts pursuant to Section 106 of the NIRC; and,

6. Compromise Penalty is imposed by Revenue Memorandum Order No. 19-2007.

A Notice of Pre-Trial Conference was issued by the court *a quo* on August 30, 2016 setting the case for Pre-Trial on November 24, 2016. However, upon motion, the Pre-Trial was moved to February 9, 2017. Accordingly, ANECO's Pre-Trial Brief was filed on November 18, 2016, while that of respondent CIR was filed on February 2, 2017.[18]

Pre-trial conference ensued. The parties submitted their Joint Stipulation of Facts and Issues on March 21, 2017. Thereafter, a Pre-Trial Order was issued on April 18, 2017 which approved and adopted the joint stipulations. Pre-trial was deemed terminated.[19]

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[17] Answer, Division Docket, Vol. I, pp. 156-162.
[18] August 5, 2019 Decision, *Rollo*, p. 40.
[19] *Id.*

During trial, the taxpayer presented Mr. Horacio T. Santos and Mr. Rodolfo L. Ranoco, its former General Manager and Finance Department Manager, respectively.[20]

ANECO filed its Formal Offer of Evidence on October 18, 2017.[21]

In a Resolution dated January 12, 2018, the court *a quo* admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-48-A", "P-49", "P-49-A", "P-49-B", "P-49-B-1", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59" and "P-60", while the admission of Exhibits "P-28", "P-29" and "P-30" was denied.[22]

On the other hand, the CIR and OIC-Regional Director Nasser A. Tangcor presented as witnesses Revenue Officers Efren M. Lima and Edna E. Makiling.[23]

The CIR and OIC-Regional Director Nasser A. Tangcor filed their Formal Offer of Evidence on March 19, 2018. In a Resolution dated May 29, 2018, the court *a quo* admitted all of respondents' exhibits namely "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-17", "R-18", "R-20", "R-20-a", "R-21", and "R-21-a".[24]

Finally, ANECO filed its Memorandum on August 28, 2018, whereas the CIR and OIC-Regional Director Tangcor filed their Memorandum on July 2, 2018. In a Resolution dated September 17, 2018, the court *a quo* submitted the case for decision.

On August 5, 2019 the court *a quo* promulgated its decision granting the ANECO's petition and cancelled the deficiency income tax and value-added tax assessments against it.

## *CTA En Banc*

Aggrieved, the CIR filed a Petition for Review on February 24, 2020 before the Court and prayed for the reversal of the appealed decision.[25] *ge*

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[20] *Id.*
[21] *Id.*, p. 41
[22] *Id.*, p. 41.
[23] *Id.*, p. 43.
[24] *Id.*
[25] *Rollo*, pp. 6-18.

On July 29, 2020, ANECO filed its Comment of Respondent (On the Petition for Review) by registered mail.[26]

In a Resolution dated March 16, 2021, the Court noted the "Back to Court Order" from the Philippine Mediation Center Unit-CTA and submitted the case for decision.[27]

## THE ISSUES

Submitted for the Court's resolution are the alleged errors raised by petitioner CIR:[28]

1. Whether the Honorable Court in Division erred in ruling that it has jurisdiction over the case; and,

2. Whether the Honorable Court in Division erred in ruling that respondent is not liable to pay deficiency income tax, value-added tax and compromise penalty in the aggregate amount of ₱11,531,816.95.

## THIS COURT'S RULING

The Court resolves to *deny* the petition.

***The court a quo has properly acquired jurisdiction over the case.***

The issue on whether ANECO's petition before the court *a quo* was premature[29] requires the interpretation and application of Section 228 of the Tax Code:

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

[26] *Rollo*, pp. 62-77.
[27] *Rollo*, pp. 105-106.
[28] Petition for Review, *Rollo*, p. 10.
[29] *Id.*, pp. 11-15.

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Underscoring supplied*)

Section 228 of the Tax Code amended Section 229 of the Old Tax Code by adding, among others, the 180-day rule. This new provision presumably avoids the situation in the past when a taxpayer would be held hostage by the Commissioner's inaction on his or her protest. Under the Old Tax Code, in conjunction with Section 11 of Republic Act No. (RA) 1125, only the decision or ruling of the Commissioner on a disputed assessment is appealable to the Court of Tax Appeals. Consequently, the taxpayer then had to wait for the Commissioner's action on his or her protest, which more often was long-delayed. With the amendment introduced by RA 8424, the taxpayer may now immediately appeal to the Court of Tax Appeals in case of inaction of the Commissioner for 180 days from submission of supporting documents.[30]

RA 9282, or the new Court of Tax Appeals Law, which took effect on April 23, 2004, amended RA 1125 and included a provision *complementing* Section 228 of the Tax Code:[31]

> "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 or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code

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[30] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 3, 2018.
[31] *Id.*

> provides a specific period of action, in which case the inaction shall be deemed a denial;" (*Underscoring supplied*)

In the case at bar, it was clearly established in the trial that ANECO received an FDDA, which was appealed promptly to the court *a quo* by filing a Petition for Review.

A final demand letter from the Bureau of Internal Revenue (BIR), reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to a final decision on a disputed assessment and is, thus, appealable to the CTA.[32]

Indisputably, ANECO received a copy of the FDDA on May 30, 2016[33] stating that it had delinquent taxes due. Specifically, it stated that ANECO's protest against the deficiency income tax and value-added tax assessment was *denied* for lack of factual and legal basis.[34] As a parting notice to ANECO, the FDDA also gave the taxpayer the courses of action to take moving forward:

> "It is requested that your aforesaid deficiency income tax and VAT liabilities be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. *This is our final decision.* If you disagree, you may appeal this final decision to the Court of Tax Appeals or to the Commissioner of Internal Revenue through request for reconsideration within thirty (30) days from the date of receipt hereof, otherwise our said deficiency income tax and value added tax assessment shall become final, executory and demandable." (*Underscoring from the original text; italics supplied*)

Consistent with Section 228 of the Tax Code, after ANECO received the FDDA, it opted to file a petition with the court *a quo* on June 28, 2016.[35]

This appeal is also within the thirty-day reglementary period imposed by Section 11 in relation to Section 7(a)(1) of RA 1125, as amended by RA 9282:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*– Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after

[32] *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001.
[33] Petition for Review, *Rollo*, p. 8; August 5, 2019 Decision, *Rollo*, p. 27; Exhibit P-47, Division Docket, Vol. II, pp. 738-739.
[34] Exhibit P-47, Division Docket, Vol. II, p. 738.
[35] Petition for Review, Division Docket, Vol. I, pp. 10-38.

> the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: *Provided, however*, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.
>
> All other cases involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration of new trial before the same Division of the CTA within fifteens (15) days from notice thereof: *Provided, however*, That in criminal cases, the general rule applicable in regular Courts on matters of prosecution and appeal shall likewise apply.
>
> No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: *Provided, however*, That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.
>
> In criminal and collection cases covered respectively by Section 7(b) and (c) of this Act, the Government may directly file the said cases with the CTA covering amounts within its exclusive and original jurisdiction." (*Underscoring supplied*)

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.[36]

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[36] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016.

Accordingly, well-settled is the rule that it is the final decision of the CIR or his authorized representative on disputed assessment that is appealable before this CTA.[37] The final decision normally takes the form of the FDDA.

Since ANECO timely filed its petition before the court *a quo* after receiving the FDDA, then the court *a quo* has properly acquired jurisdiction over the case under Section 11 and Section 7(a)(1) of RA 1125, as amended by RA 9282.

***Section 39(a)(1) of PD 269 exempts ANECO from Minimum Corporate Income Tax (MCIT).***

*First*, the provision of MCIT, which was first introduced by RA 8424 in 1998, can be found in Section 27(E) under Title II, Chapter IV of the Tax Code:

**"TITLE II**
**TAX ON INCOME**

xxx xxx xxx

**CHAPTER IV**
**TAX ON CORPORATIONS**

**SEC. 27.** *Rates of Income Tax on Domestic Corporations*

(A) *In general.* xxx.

xxx xxx xxx

(B) *Proprietary Educational Institutions and Hospitals*

xxx xxx xxx

(C) *Government-owned or -Controlled Corporations, Agencies or Instrumentalities*

xxx xxx xxx

(D) *Rates of Tax on Certain Passive Incomes*

xxx xxx xxx Je

[37] *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001.

(E) *Minimum Corporate Income Tax on Domestic Corporations*

(1) *Imposition of Tax.* - A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.

(2) *Carry Forward of Excess Minimum Tax.* - Any excess of the minimum corporate income tax over the normal income tax as computed under Subsection (A) of this Section shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years.

(3) *Relief from the Minimum Corporate Income Tax Under Certain Conditions.* - The Secretary of Finance is hereby authorized to suspend the imposition of the minimum corporate income tax on any corporation which suffers losses on account of prolonged labor dispute, or because of *force majeure*, or because of legitimate business reverses.

The Secretary of Finance is hereby authorized to promulgate, upon recommendation of the Commissioner, the necessary rules and regulation that shall define the terms and conditions under which he may suspend the imposition of the minimum corporate income tax in a meritorious case.

(4) *Gross Income Defined.* - For purposes of applying the minimum corporate income tax provided under Subsection (E) hereof, the term **'gross income'** shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. **'Cost of goods sold'** shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.

For a trading or merchandising concern, **'cost of goods sold'** shall include the invoice cost of the goods sold, plus import duties, freight in transporting the goods to the place where the goods are actually sold including insurance while the goods are in transit.

For a manufacturing concern, cost of **'goods manufactured and sold'** shall include all costs of production of finished goods, such as raw materials used, direct labor and manufacturing overhead, freight cost, insurance premiums and other costs incurred to bring the raw materials to the factory or warehouse.

In the case of taxpayers engaged in the sale of service, 'gross income' means gross receipts less sales returns, allowances, discounts and cost of services. **'Cost of services'** shall mean all direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (A) salaries and employee benefits of personnel, consultants and specialists directly rendering the service and (B) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies: *Provided, however,* That in the case of banks, **'cost of services'** shall include interest expense." (*Underscoring supplied*)

Under Section 27(E) of the Tax Code, the MCIT is the lowest income tax that can be imposed on a domestic corporation and is computed at 2%[38] of its gross income, beginning on the fourth taxable year immediately following the year in which it started business operations, whenever the MCIT is *greater* than the regular corporate income tax computed under Section 27(A).

The MCIT was devised because of the perceived inadequacy of the self-assessment system in capturing the true income of corporations. It operates as a relatively simple and effective revenue-raising instrument compared to the normal income tax which is more difficult to control and enforce.

The Supreme Court *En Banc* explained the concept of MCIT at length in *Chamber of Real Estate and Builders' Associations, Inc. v. The Honorable Executive Secretary Alberto Romulo, et al.*[39] in this manner:

> **"CONCEPT AND RATIONALE OF THE MCIT**
>
> The MCIT on domestic corporations is a new concept introduced by RA 8424 to the Philippine taxation system. It came about as a result of the perceived inadequacy of the self-assessment system in capturing the true income of corporations. It was devised as a relatively simple and effective revenue-raising instrument compared to the normal income tax which is more difficult to control and enforce. It is a means to ensure that everyone will make some minimum contribution to the support of the public sector. The congressional deliberations on this are illuminating:
>
> > Senator Enrile.
> >
> > Mr. President, we are not unmindful of the practice of certain corporations of reporting constantly a loss in their operations to avoid the payment of taxes, and thus avoid sharing in the cost of government. In this regard, the Tax Reform Act introduces for the first time a new concept called the [MCIT] so as to minimize tax evasion, tax avoidance, tax manipulation in the country and for administrative convenience.... This will go a long way in ensuring that corporations will pay their just share in supporting our public life and our economic advancement.
>
> Domestic corporations owe their corporate existence and their privilege to do business to the government. They also benefit from the efforts of the government to improve the financial market and to ensure a favorable business climate. It is therefore fair for the government to require them to make a reasonable contribution to the public expenses.
>
> <u>Congress intended to put a stop to the practice of corporations which, while having large turn-overs, report minimal or negative net income resulting in minimal or zero income taxes year in and year out, through</u> Jr

[38] Under the RA 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act (CREATE), effective July 1, 2020 until June 30, 2023, the MCIT rate is one percent (1%).
[39] G.R. No. 160756, March 9, 2010.

under-declaration of income or over-deduction of expenses otherwise called tax shelters.

> Mr. Javier (E.)
>
> ... [This] is what the Finance Dept. is trying to remedy, that is why they have proposed the [MCIT]. Because from experience too, you have corporations which have been losing year in and year out and paid no tax. So, if the corporation has been losing for the past five years to ten years, then that corporation has no business to be in business. It is dead. Why continue if you are losing year in and year out? So, we have this provision to avoid this type of tax shelters, Your Honor.

The primary purpose of any legitimate business is to earn a profit. Continued and repeated losses after operations of a corporation or consistent reports of minimal net income render its financial statements and its tax payments suspect. For sure, certain tax avoidance schemes resorted to by corporations are allowed in our jurisdiction. The MCIT serves to put a cap on such tax shelters. As a tax on gross income, it prevents tax evasion and minimizes tax avoidance schemes achieved through sophisticated and artful manipulations of deductions and other stratagems. Since the tax base was broader, the tax rate was lowered.

To further emphasize the corrective nature of the MCIT, the following safeguards were incorporated into the law:

First, recognizing the birth pangs of businesses and the reality of the need to recoup initial major capital expenditures, the imposition of the MCIT commences only on the fourth taxable year immediately following the year in which the corporation commenced its operations. This grace period allows a new business to stabilize first and make its ventures viable before it is subjected to the MCIT.

Second, the law allows the carrying forward of any excess of the MCIT paid over the normal income tax which shall be credited against the normal income tax for the three immediately succeeding years.

Third, since certain businesses may be incurring genuine repeated losses, the law authorizes the Secretary of Finance to suspend the imposition of MCIT if a corporation suffers losses due to prolonged labor dispute, force majeure and legitimate business reverses.

Even before the legislature introduced the MCIT to the Philippine taxation system, several other countries already had their own system of minimum corporate income taxation. Our lawmakers noted that most developing countries, particularly Latin American and Asian countries, have the same form of safeguards as we do. As pointed out during the committee hearings:

> [Mr. Medalla:] Note that most developing countries where you have of course quite a bit of room for underdeclaration of gross receipts have this same form of safeguards.

> In the case of Thailand, half a percent (0.5%), there's a minimum of income tax of half a percent (0.5%) of gross assessable income. In Korea a 25% of taxable income before deductions and exemptions. Of course the different countries have different basis for that minimum income tax.
>
> The other thing you'll notice is the preponderance of Latin American countries that employed this method. Okay, those are additional Latin American countries.

At present, the United States of America, Mexico, Argentina, Tunisia, Panama and Hungary have their own versions of the MCIT." (*Underscoring supplied*)

*Second*, respondent ANECO, it is also not disputed, is a non-stock, non-profit electric cooperative[40] duly organized, registered and existing under the provisions of PD 269.[41]

PD 269, as amended, or the National Electrification Administration Decree, declares that it is the policy of the State to provide "the total electrification of the Philippines on an area coverage basis… being vital to the people and the sound development of the nation."[42] Pursuant to this policy, PD 269 aims to "promote, encourage and assist all public service entities engaged in supplying electric service, particularly electric cooperatives" by "giving every tenable support and assistance" to the electric cooperatives coming within the purview of the law.[43]

*Third*, Section 39 of PD 269 expressly provides the following tax incentives to electric cooperatives in line with the law's policy:

"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, cooperatives (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)

[40] August 5, 2019 Decision, *Rollo*, p. 26.
[41] *Philippine Rural Electric Cooperatives Association, Inc., et al. v. The Secretary, Department of Interior and Local Government, et al.*, G.R. No. 143076, June 10, 2003, *En Banc*.
[42] Section 2, PD No. 269.
[43] *Id.*

> 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.
>
> xxx xxx xxx" (*Underscoring supplied*)

*Fourth*, because of their special knowledge and expertise over matters falling under their jurisdiction, issuances and findings of administrative or regulatory agencies are generally accorded respect.[44] In this case, the BIR has issued guidance on the matter now before the Court.

Under Section A (3) of Revenue Memorandum Circular No. (RMC) 72-2003 dated October 20, 2003, electric cooperatives registered with National Electrification Administration (NEA) are *exempt* from income taxes for which they are directly liable.

> **"REVENUE MEMORANDUM CIRCULAR NO. 72-03**
>
> **SUBJECT** : Tax Implications of Electric Cooperatives Registered with the National Electrification Administration and Cooperative Development Authority
>
> **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);
> 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

[44] *Land Bank of the Philippines v. Spouses Rosa and Pedro Costo*, G.R. No. 174647, December 5, 2012.

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." (*Underscoring supplied*)

On September 25, 2009, in BIR Ruling No. COOP-(E-007) 620-09, the BIR issued an opinion to First Laguna Electric Cooperative, Inc. affirming that an *electric cooperative* formed primarily for the purpose of supplying, promoting and encouraging the fullest use of electric service to its members on an area coverage basis, pursuant to the provisions of PD 269, which was also franchised under NEA under Certificate dated August 12, 1977, Certificate No. 060 dated May 28, 1980 and Certificate No. 196 dated November 29, 2002 *is exempt from income tax* for which it is directly liable:

"As represented, you were issued BIR Ruling No. Coop (E-005) 376-2009 dated June 15, 2009. From the documents submitted, it appears that you are an electric cooperative (EC) which was franchised under the National Electrification Administration (NEA) under Certificate dated August 12, 1977, Certificate No. 060 dated May 28, 1980 and Certificate No. 196 dated November 29, 2002.

You were formed primarily for the purpose of supplying, promoting and encouraging the fullest use of electric service to its members on an area coverage basis, pursuant to the provisions of Presidential Decree No. 269.

In reply, please be informed that you are exempt from income tax pursuant to Section 39 (a) of PD No. 269 as clarified in Section A (3) and (4) of Revenue Memorandum Circular No. 72-2003 dated October 20, 2003 which provides:

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

xxx xxx xxx

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 the 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 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…'
>
> As a NEA-registered electric cooperative, you are, therefore, exempt from income tax for which you are directly liable. Thus, payments to you shall not be subject to income tax and consequently, to creditable withholding tax (BIR Ruling No. 69-98 dated May 21, 1998)."

Furthermore, in a ruling issued to Batangas II Electric Cooperative, Inc., an electric cooperative registered with NEA, which was also formed primarily for the purpose of supplying, promoting and encouraging the fullest use of electric service to its members on an area coverage basis, pursuant to the provisions of PD 269 and issued a Certificate of Registration dated August 12, 1977 and a National Electrification Commission Certificate of Franchise, the BIR stated that the exemption of electric cooperatives from income tax is *permanent in nature* as expressly provided in No. 1 of Section 39(a) of PD 269.[45]

Based on the foregoing, the court *a quo* has concluded that ANECO is exempt from the payment of MCIT, thus:

> *"**Petitioner ANECO is exempt from payment of Minimum Corporate Income Tax (MCIT)***
>
> Respondents allege that petitioner cannot claim perpetual exemption from income tax under PD 269. According to respondents, under PD 269, petitioner has been granted tax exemption provided it shall operate in conformity with the provisions thereof, the exemption is for 30 years or when the cooperative is completely free from indebtedness incurred by borrowing, whichever comes first.
>
> We are not persuaded.
>
> It is undisputed that petitioner is organized and existing pursuant to PD 269, and is granted a franchise by the National Electrification Commission. Section 39 of PD 269 provides for the exemption from taxes, imposts, duties and fees, to wit:
>
> xxx xxx xxx
>
> It is clear from the foregoing provision that electric cooperatives registered under the NEA shall be exempt from payment of income tax. Respondents' contention that the exemption is merely for a period of thirty (30) years or until the cooperative becomes completely free from

[45] BIR Ruling No. COOP-(156) 703-09 dated November 11, 2009.

> indebtedness incurred from borrowing, whichever comes first, is specious. The limit of thirty (30) years pertains to the taxes, fees and charges mentioned in number two, which should be taken to mean as taxes other than income tax.
>
> Considering that petitioner is exempt from income tax by provision of the law, it is likewise exempted from payment of MCIT, it being in the nature of an income tax.
>
> We still find our ruling in *Commissioner of Internal Revenue v. Samar-I Electric Cooperative* apt, viz.:
>
> > We, thus agree with the following findings of the Court in Division as follows:
> >
> > In the case at bar, it is undisputed that petitioner is registered with NEA on February 27, 1974, pursuant to PD 269 xxx. However, the expiration of petitioner's provisional registration with the CDA is irrelevant to the issue on hand since petitioner remained registered with NEA; thus, governed by the provisions of PD 269. This being the case, Section 39 of PD 269 clearly grants tax exemption to electric cooperatives, such as petitioner, from income tax. The Minimum Corporate Income Tax (MCIT) being an income tax; thus, petitioner is logically exempted from the payment of MCIT." (*Citations omitted; underscoring supplied*)

Petitioner CIR has failed to raise any point that would justify the reversal of the holding of the court *a quo* on this issue.

***ANECO is not liable from deficiency VAT.***

Beginning January 1, 1998, under Section 109(s) of the Tax Code,[46] sales by electric cooperative registered with NEA, relative to the generation and distribution of electricity was listed as exempt from VAT:

> "**SEC. 109.** *Exempt Transactions.* - The following shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (s) Sales by electric cooperatives duly registered with the Cooperative Development authority or National Electrification Administration, 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;"

[46] RA 8424.

It will also be recalled that, pursuant to this provision, electric cooperatives registered with NEA were exempted from "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]" under RMC 72-2003.

However, upon the effectivity of RA 9337 in 2005, the exemption of electric cooperatives from VAT was removed.[47]

Consequently, Revenue Regulations No. (RR) 16-2005, as amended by RR No. 4-2007, particularly Section 4.108-2 (13) and Section 4.108-3 (f) state that sales of electricity by generation, transmission, and/or distribution companies, *which includes electric cooperatives*, are subject to 12% VAT on their gross receipts.

> "**SEC. 4.108-2.** Meaning of "Sale or Exchange of Services". – The term "sale or exchange of services" means the performance of all kind of services in the Philippines for others for a fee, remuneration or consideration, whether in kind or in cash, including those performed or rendered by the following:
>
> xxx xxx xxx
>
> (13) <u>sales of electricity by generation, transmission, and/or distribution companies;</u>
>
> xxx xxx xxx
>
> **SEC. 4.108-3.** Definitions and Specific Rules on Selected Services.
>
> –
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 12% VAT on their gross receipts; *Provided, That* sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.
>
> 'Generation companies' refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA). Je

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[47] *See* Section 108(A) on the definition of "sale or exchange of services", which includes sales of electricity by generation companies, transmission and distribution companies *and* Section 109, as amended by RA 9337.

They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.

'Transmission companies' refers to any person or entity that owns and conveys electricity through the high voltage backbone system and/or subtransmission assets, e.g. NPC or TRANSCO. 'Subtransmission assets' shall refer to the facilities related to the power delivery service below the transmission voltages and based on the functional assignment of asset including, but not limited to step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve power factor, overhead lines, and the land where such facilities/equipments are located. These include NPC assets linking the transmission system and the distribution system which are neither classified as generation or transmission.

'Distribution companies' refer to persons or entities which operate a distribution system in accordance with the provisions of the EPIRA. They shall include any distribution utility such as an electric cooperative organized pursuant to Presidential Decree No. 269, as amended, and/or under RA No. 6938, or as otherwise provided in the EPIRA, a private corporation, or a government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with the EPIRA.

For this purpose, a distribution system refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or subtransmission system or generator connection and the point of connection to the premises of the end-users.

'Gross Receipts' under this Subsection (f) shall refer to the following:

(a) Total amount charged by generation companies for the sale of electricity and related ancillary services; and/or

(b) Total amount charged by transmission companies for transmission of electricity and related ancillary services; and/or

(c) Total amount charged by distribution companies and electric cooperatives for distribution and supply of electricity, and related electric service. The universal charge passed on and collected by distribution companies and electric cooperatives shall be excluded from the computation of the Gross Receipts."

The issue elevated before the Court on the deficiency VAT, however, pertains to the 5% Final Withholding VAT on ANECO's sales of electricity to the BIR.[48]

[48] BIR Forms No. 2306, Certificates of Final Tax Withheld At Source, Exhibits P-17 to P-27, Division Docket, Vol. II, pp. 698-708.

As explained in the assailed decision, the BIR assessed ANECO deficiency VAT based on the disallowed 5% Final Withholding VAT credits ANECO claimed on the VAT withheld by the BIR from its payments to ANECO relating to its sales of electricity to the same government agency.

> "Respondent's [CIR] audit disclosed that the final VAT Withheld on the generation and transmission charges claimed by the petitioner [ANECO] as tax credit in the amount of ₱1,093,566.82 was disallowed on the ground that the real and actual declarant and claimant of the aforementioned income and the creditable withholding VAT is the power supplier of the Generation and Transmission Company. According to respondent, the cooperative serves only as the collecting arm and the withholding taxes accruing thereon should be tendered to the power supplier. This resulted to the computation of deficiency VAT pursuant to Sections 106, 248 and 249 of the NIRC, as amended.
>
> In the course of his audit, respondent found that there is a variance on the declaration of income for income taxes and on the declaration of receipts for VAT. This was allegedly so because Generation and Transmission companies billed the end-user through the electric cooperative for the sale and transmission of electricity and ancillary service including the VAT thereon. Respondent maintains that the collection shall not form part of the total receipts of the cooperative and shall not claim input tax credits on the transmission charges. As found by respondent, the final VAT withheld on the generation and transmission charges has been claimed by petitioner as tax credit.
>
> On the other hand, petitioner submits that the referred VAT withheld that was disallowed by respondent amounting to ₱1,093,566.82 was part of the total 5% FWVAT in the amount of ₱2,733,917.06 withheld by the government withholding agents.
>
> Petitioner posits that as provided in RMC No. 23-2012, it is the responsibility of the government withholding agents to withhold the correct taxes. In the certificate of final tax withheld at source or BIR Form 2306 prepared by the government withholding agents, the name of petitioner was put as payee. Thus, it is only just and proper that petitioner would claim the tax credits actually withheld by the government withholding agents."

Against the evidence presented by ANECO in support of its position, *i.e.* BIR Forms No. 2306 or Certificates of Final Tax Withheld At Source,[49] however, the CIR failed to rebut the same. Accordingly, the court *a quo* upheld ANECO's explanation during trial:

> "We find for petitioner.
>
> Section 4.114-2 of Revenue Regulation (RR) No. 16-2005, as amended by RR No. 4-2007 provides that income payments made by the

[49] *Id.*

> government on their purchases of goods and services shall be subject to final withholding VAT of 5%.
>
> A scrutiny of petitioner's Quarterly VAT Returns and the Monthly Schedule of Value-Added Tax Payments per Returns for the CY 2012 reveals the following:
>
> xxx xxx xxx
>
> Respondent's asseverations that petitioner cannot claim the withholding VAT as the latter was not given the authority to claim for their own VAT payable and that it has the obligation to forward the withholding tax certificate to the proper claimant is of no moment since petitioner already declared the sales to government amounting to ₱54,673,967.48 related to the entire VAT withheld of ₱2,733,917.06. Consequently, petitioner can rightfully claim the said creditable VAT actually withheld by the government withholding agents." (Underscoring supplied)

After a careful and thorough review of the issues raised by petitioner, these issues are but mere rehash of the grounds already evaluated and passed upon by the court *a quo*, thus, the Court finds no cogent reason to reverse the appealed decision.

**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the August 5, 2019 Decision and the January 21, 2020 Resolution are **AFFIRMED**.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

**ON LEAVE**
**ERLINDA P. UY**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice