REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

MISAMIS ORIENTAL RURAL ELECTRIC SERVICE COOPERATIVE I, INC. (MORESCO-I), Petitioner,	**CTA CASE NO. 9585**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 08 2020 9:10 a.m.

x- x

RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court is Petitioner's **Motion for Reconsideration**, filed on December 11, 2019, with Respondent's **Opposition (to Petitioner's Motion for Reconsideration)**, filed on January 27, 2020.

In its Motion, Petitioner seeks reconsideration of the Decision promulgated on October 1, 2019, in holding that Respondent's deficiency assessments against Petitioner have already attained finality and therefore became demandable and executory, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**

Petitioner primarily argues that this Court erred in finding that it has no jurisdiction over the present case considering that the disputed assessment already became final and executory. Petitioner explains that, *first*, it was erroneous to base the running of the thirty (30) day period from June 24, 2016, the date when it received the Final Letter of Demand (FLD) of even date. Petitioner claims that this Court failed to consider the Letter of Protest with Request of Reinvestigation it filed on July 8, 2016 with Revenue Region No. 16 – CDO City, which in so doing, has effectively interrupted the 30-day period. *Second*, Petitioner insists that the second protest letter it filed on November 2, 2016 was merely a reiteration of the first protest letter it filed on July 8, 2016. As such, the counting of the period thereof should be reckoned on the original protest letter and not the second protest letter. *Third*, the fact that Respondent did not issue a Warrant of Distraint and/or Levy against Petitioner is considered a mute testimony that Respondent himself did not believe the assessment already attained finality. Lastly, Petitioner maintains that it is permanently exempted from income tax.

On the other hand, in his Opposition, Respondent reiterates the ruling in the Decision assailed by Petitioner that the deficiency assessments is final and executory. He points out that cursory reading of the Letter Protest with Request of Reinvestigation that Petitioner filed on July 8, 2016 would readily show that the same pertains to the Preliminary Assessment Notice (PAN) dated May 11, 2016 and not against the FLD dated June 24, 2016. As such, Respondent asserts that a tax assessment that has become, final, executory and enforceable for failure of the taxpayer to assail it can no longer be contested.

After consideration, this Court finds no merit in Petitioner's Motion for Reconsideration.

In the case of *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*,[1] the Supreme Court held that for this Court to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Simply stated, an assessment must first be disputed by the taxpayer and ruled upon by Respondent to warrant a decision from which a petition for review may be taken to this Court.

In the present Motion, the main argument raised by Petitioner essentially boils down as to when the 30-day period within which to protest the assessment be counted from. As illustrated in the assailed Decision, an excerpt of the timeline of material events is quoted hereafter, to wit:

DATE	MATERIAL EVENT
June 20, 2016	Petitioner received a PAN[2] dated May 11, 2016.
July 8, 2016	Petitioner sent a Letter of Protest with Request for Reinvestigation[3] dated July 7, 2016 to Regional

[1] G.R. No. 148380, December 9, 2005.
[2] Exhibit "P-3"
[3] Exhibit "P-4".

DATE	MATERIAL EVENT
	Director Glen A. Geraldino of Revenue Region No. 16 – CDO City.
June 24, 2016	Respondent issued a FLD[4] reiterating payment of petitioner's tax liabilities which was received by petitioner on the same day.
November 2, 2016	Petitioner filed a Protest Letter[5] dated October 25, 2016 with BIR Revenue Region No. 16 – CDO City.

In connection above, Petitioner's Formal Offer of Evidence[6] filed on February 19, 2018 provides the exhibits, description, and the purpose for which they were offered by Petitioner, *viz.*:

"x x x

'P-3' Preliminary Assessment Notice (PAN) dated

<u>Purpose</u>: To prove that no actual audit or examination was made by the respondent on petitioner's books of accounts as there were no working papers attached to the PAN and a mere analytical procedure based on the financial statements or records of petitioner was conducted

'P-4' Letter for Reconsideration

<u>Purpose</u>: ***To prove that petitioner sought reconsideration of the PAN*** considering that it has no factual and legal basis with eh reglementary period

'P-5' Formal Letter of Demand (FLD) dated January 24, 2016

<u>Purpose</u>: To prove that petitioner received a copy of the FLD which petitioner did not agree

'P-6' Protest

<u>Purpose</u>: ***To prove that upon receipt of the FLD, petitioner immediately protested the same*** within the period

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[4] Exhibit "P-5".
[5] Exhibit "P-6".
[6] Docket, pp. 212-214.

allowed under the respondent's rules and regulations of thirty (30) days

x x x." *(Emphases and italics supplied)*

Evidently, it was the Protest Letter dated October 25, 2016 marked and offered as Exhibit "P-6" that Petitioner envisioned as the protest enunciated under Section 228 of the National Internal Revenue Code (NIRC) of 1997 in relation to Section 3.1.5 of Revenue Regulations No. 12-99, as amended, which, unfortunately, was belatedly filed.

More so, perusal of the Letter of Protest with Request for Reinvestigation filed on July 8, 2016 which was marked and offered as Exhibit "P-4" shows that it was really intended as response to the PAN, thus:

"07 July 2016

MR. GLEN A. GERALDINO
Regional Director
Revenue Region No. 16
Bureau of Internal Revenue
Bulua, Cagayan de Oro City

LETTER OF PROTEST WITH REQUEST FOR REINVESTIGATION

The Taxpayer is Misamis Oriental Rural Electric Service Cooperative (MORESCO-1), an electric cooperative existing pursuant to P.D. 269, with business address located at Laguindingan, Misamis Oriental which is the same address it has been occupying since its formation. MORESCO-1 is represented by the undersigned General Manager.

This is a request for reconsideration and reinvestigation of the Preliminary Assessment Notice (PAN) dated 11 May 2016 with accompanying Audit Result/Assessment Notice under Letter of Authority No. 098-2014-00000304 (eLA201000061793) for Income Tax, Value Added Tax, Expanded Withholding and Withholding Tax Deficiencies on Compensation and under the Expanded System for taxable year 2013.

x x x

MORESCO 1 has endeavored to withhold and remit all taxes due from the compensation of its employees and under the expanded withholding system. Further, we are willing to pay the assessed withholding tax.

In view of the foregoing, MORESCO 1 is praying that the preliminary assessment notice be recalled as it has no basis in fact and law.

Very truly yours,
(sgd)
JULIE B. REAL, P.E.E.
General Manager
MORESCO-1"[7]

Clear as daylight, the above letter pertains to Petitioner's response to the PAN. It is also immaterial whether Petitioner's second protest letter filed on November 2, 2016 was a mere reiteration of the above letter since both protests refer to different assessment notices.

Accordingly, based on the foregoing discussions, this Court maintains the conclusion reached in the Decision promulgated on October 1, 2019. Regrettably, Petitioner failed to put forth any compelling reason to justify the reversal or modification of the Decision assailed.

WHEREFORE, premises considered, Petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[7] Emphases and Italics supplied.