REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Second Division

PAMPANGA III ELECTRIC COOPERATIVE, INC., *Petitioner,*	**CTA CASE NO. 10999**
-versus-	
COMMISSIONER OF INTERNAL REVENUE and REGIONAL DIRECTOR ANTONIO JONATHAN G. JAMINOLA, in his capacity as the Regional Director of REVENUE REGION NO. 4, CITY OF SAN FERNANDO PAMPANGA OF THE BUREAU OF INTERNAL REVENUE, *Respondents.*	Members: **RINGPIS-LIBAN,** P.J., *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.* Promulgated:

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

The instant Petition for Review ("Petition") was filed pursuant to *Rule 8, Section 3(a), in relation to Rule 4, Section 3(a)(2) of the Revised Rules of the Court of Tax Appeals, as amended ("RRCTA").* It seeks to cancel, annul, and set aside the deficiency income tax assessment issued against petitioner in the aggregate amount of Php4,131,802.25, inclusive of interest, surcharges, and penalties, for the taxable year 2018 ("TY 2018").[1]

[1] See Summary of the Case, Pre-Trial Order, Records, Vol. I, p. 331.

The Parties

Petitioner, **PAMPANGA III ELECTRIC COOPERATIVE, INC. ("PELCO III"),** is a non-stock, non-profit electric cooperative that was duly organized by virtue of *Presidential Decree ("P.D.") No. 269 otherwise known as The National Electrification Administration Decree.* Its principal office is at Sampaloc, Apalit, Pampanga.[2] It is a duly registered taxpayer of the Bureau of Internal Revenue ("BIR") under Tax Identification No. 000-800-840-000 under Revenue District Office No. 21B – City of San Fernando, South Pampanga ("RDO No. 21B"), which falls under Revenue Region No. 4 ("RR No. 4").[3]

Meanwhile, respondent Commissioner of Internal Revenue ("CIR") is the Commissioner of the BIR and vested under pertinent laws with the authority to carry out the functions, powers, duties, and responsibilities, including, among others, the power to decide disputed assessments, cancel and abate tax liabilities, and other matters pursuant to and in accordance with the *National Internal Revenue Code, as amended, ("NIRC")* and other applicable tax laws. Respondent CIR may be served with summons and court processes at the BIR National Office Building, Litigation Division, Room 703, Diliman. Quezon City.[4]

On the other hand, respondent Regional Director Antonio Jonathan G. Jaminola is sued in his capacity as the head of Revenue Region ("RR") No. 4 of the BIR. Said region is the government agency, under the control and supervision of the CIR, which is involved in the collection of national internal revenue taxes and other matters including the power to levy and distrain taxpayer's properties under such region. It is the Revenue Region where PELCO III is registered. Respondent Jaminola may be served with summons and court processes at the BIR National Office Building, Litigation Division, Room 703, Diliman. Quezon City.[5]

The Facts

From November 29, 1990 up to present, PELCO III continues to hold a Certificate of Franchise issued by the National Electrification Administration ("NEA") authorizing it to operate an electric light and power service facility for its member-consumer-owners in the areas of Apalit, Macabebe, Masantol, Minalin, San Simon, and Sto. Tomas. It is an electric

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2 Records, Vol. 1, May 10, 2023 Joint Stipulation of Facts and Issues ("JSFI"), p. 1.

3 Records, Vol. II, Exhibit **"P-4"** of petitioner's Formal Offer of Evidence ("FOE"), pp. 351-676, PELCO III's Certificate of Registration issued by the BIR; Records, Vol. 1, pp. 66-67; Answer to Question Nos. 5-6 of Judicial Affidavit of Ms. Maria Elizabeth Urbano ("Ms. Urbano") dated September 30, 2022, pp.2-3.

4 Records, Vol. 1, May 10, 2023 Joint Stipulation of Facts and Issues ("JSFI"), p. 2.

5 *Ibid.*

cooperative that was duly organized by virtue of *P.D. No. 269, or The National Electrification Administration Decree,* and enjoys all the privileges and benefits that are afforded by the same.[6] PELCO III has not yet withdrawn its registration with the NEA nor transitioned to the Cooperative Development Authority under the *Cooperative Code of the Philippines.* It continues to be covered by the provisions of P.D. No. 269 until the franchise expires.[7]

Former RR No.4 Regional Director Edgar B. Tolentino issued a Letter of Authority ("LOA") No. eLA201600028280 under LOA-21B-2019-00000311 dated September 9, 2019 ("eLOA"). The eLOA stated that only revenue officers ("ROs") Jonathan Balagtas and Jennifer Manio/Group Supervisor ("GS") Virginia Bangay of RDO No. 21B were authorized to examine PELCO III's books of accounts and other accounting records for TY 2018.[8]

After the eLOA was served, PELCO III prepared and submitted the requested documents on 25 September 2019.[9]

Thereafter, PELCO III initially received the preliminary findings from the revenue examiners stating that PELCO III was liable for deficiency taxes amounting to Php 282,370,243.80 comprising of deficiency Income Tax ("IT"), deficiency Value-Added Tax ("VAT"), deficiency Expanded Withholding Tax ("EWT"), and Miscellaneous Tax ("MT").[10]

PELCO III had a discussion with the Revenue Examiners where it explained that PELCO III, as an electric cooperative, is not an income-generating entity.[11] Y

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6 Records, Vol. II, Exhibit **"P-5"** of the FOE, pp. 351-676, PELCO III 's Certificate of Franchise with Certificate No. 145 issued by the NEA on November 29, 1990; Records Vol. II, Exhibit **"P-6"** of the FOE, pp. 351-676, PELCO III's Annual Income Tax Return (BIR Form No. 1702-EX) for Calendar Year ("CY") 2018; Records Vol. II, Exhibit **"P-7"** of the FOE, pp. 351-676, PELCO III's 2018 Audited Financial Statements ("AFS"); Records, Vol. I, pp. 67-69; Answer to Question Nos. 8-9, 11-12 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp.3- 5.

7 Records, Vol. I; Answer to Question Nos. 87 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp. 27.

8 Records, Vol. I, Exhibit **"P-8"** of the FOE, pp. 351-676, Letter of Authority ("LOA") eLA201600028280 under LOA No. 21B-2019-00000311 dated September 9, 2019; Records, Vol. II, Exhibit **"P-9"** of the FOE, pp. 351-676, BIR's Request for Presentation of Documents; Records, Vol. I, pp. 76-77; Answer to Question Nos. 40-43 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp.12- 13; Exhibit **"R-1"**, BIR Records, p. 1.

9 Records Vol. II, Exhibit **"P-10"** of the FOE, pp. 351-676, Transmittal Letters dated September 25, 2019; Records, Vol. I, pp. 77-78; Answer to Question No. 45-48 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp.13- 14.

10 Records Vol. II, Exhibit **"P-11"** of the FOE, pp. 351-676, Undated Preliminary Findings; Records, Vol. I, pp. 79-80; Answer to Question Nos. 51-53 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp.15-16.

11 Records, Vol. 1, pp. 79; Answer to Question No. 51 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.15.

PELCO III then received a Notice of Informal Conference ("NIC"), dated January 3, 2020, containing the revised preliminary findings of tax deficiencies amounting to Php2,359,562.05 comprised of deficiency IT, deficiency VAT, deficiency EWT, and MT, inclusive of interest and compromise penalties.[12]

Thereafter, PELCO III had another discussion with the Revenue Examiner where it submitted additional documents in support of its position that PELCO III enjoys permanent exemption from income tax under P.D. No. 269.[13]

PELCO III afterwards voluntarily paid and settled the following VAT,[14] EWT,[15] and MT[16] deficiency findings through the eFPS on 24 February 2020.

Subsequently, respondents asked PELCO III to execute a Waiver of the Defense of Prescription.[17]

On October 20, 2021, PELCO III received a Preliminary Assessment Notice (the ''PAN''), dated September 1, 2021,[18] containing the deficiency income tax assessment amounting to Php 4,022,494.39, inclusive of interest, surcharge, and penalties. In the Details of Discrepancy attached to the PAN, it was alleged that the Assailed Assessment was issued because of *Revenue*

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[12] Records Vol. II, Exhibit **"P-12"** of the FOE, pp. 351-676, Notice of Informal Conference ("NIC") dated January 3, 2020; Records, Vol. I, p. 81; Answer to Question Nos. 51-56 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p. 17.

[13] Records, Vol. I, pp. 79; Answer to Question No. 51 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.15.

[14] Records, Vol. II, Exhibit **"P-13"** of the FOE, pp. 351-676, eFPS BIR Form No. 0605 (Payment Form) showing VAT payment in the amount of Php 1,787,333.69; Records, Vol. II, Exhibit **"P-14"** of the FOE, pp. 351-676, eFPS BIR Form No. 0605 (Payment Form) showing EWT payment in the amount of Php 185,140.62; Records, Vol. I, pp. 82-83; Answer to Question No. 60 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp.18- 19; Records, Vol. 1, p. 84; Answer to Question No. 65 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.20.

[15] Records, Vol. II, Exhibit **"P-15"** of the FOE, pp. 351-676, eFPS BIR Form No. 0605 (Payment Form) showing EWT payment in the amount of Php 185,140.62; Records, Vol. II, Exhibit **"P-16"** of the FOE, pp. 351-676, eFPS Payment Confirmation showing EWT payment in the amount of Php 185,140.62; Records, Vol. 1, pp. 82-83; Answer to Question No. 60 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp.18- 19; Records, Vol. 1, p. 84; Answer to Question No. 65 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.20.

[16] Records, Vol. II, Exhibit **"P-17"** of the FOE, pp. 351-676, eFPS BIR Form No. 0605 (Payment Form) showing Miscellaneous Tax payment in the amount of Php 53,000.00; Records, Vol. II, Exhibit **"P-18"** of the FOE, pp. 351-676, eFPS Payment Confirmation showing Miscellaneous Tax payment in the amount of Php 53,000.00; Records, Vol. II, Exhibit **"P-19"** of the FOE, pp. 351-676, UnionBank Online Confirmation Page. Records, Vol. 1, pp. 82-83; Answer to Question No. 60 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp.18- 19; Records, Vol. 1, p. 84; Answer to Question No. 65 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.20.

[17] Records, Vol. I; Answer to Question No. 51 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp.15; Records, Vol. II, Exhibit **"P-20"** of the FOE, pp. 351-676, Undated Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal; Records, Vol. I, pp. 85-86; Answers to Question Nos. 70-71 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp. 21-22.

[18] Records, Vol. II, Exhibit **"P-21"** of the FOE, pp. 351-676, Preliminary Assessment Notice dated September 1, 2021; Records, Vol. 1, pp. 86; Answer to Question No. 74 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp. 22.

Memorandum Circular ("RMC") No. 74-2013 and pursuant to *BIR Ruling No. 398-2013* dated 04 November 2013 finding Marinduque Electric Cooperative Inc. subject to income tax *("MARELCO Ruling"):*

> *Accordingly this Office opines that MARELCO's income from its electric service operations is subject to income tax beginning January 1, 2004. However, MARELCO is subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes as its exemption ended December 31, 2003 the thirtieth full calendar year after the cooperative's organization as stated in its registration papers or until it shall become completely free of indebtedness incurred by borrowing whichever comes first.*
>
> *Therefore, similar to the case of MARELCO, income from your electric service operations in 2018 is already subject to income tax as your income tax exemption ended December 31, 2011, thirty years after your corporate organization.* [19]

On October 29, 2021, PELCO III filed its Reply contesting the Assailed Assessment and reiterating its position that PELCO III, as an electric cooperative registered with NEA, is exempt from income tax. [20]

On December 9, 2021, PELCO III received an undated BIR Letter acknowledging the receipt of its Reply to PAN.[21] Likewise, on the same date, PELCO III received a Formal Letter of Demand ("FLD")/Final Assessment Notice ("FAN"), dated November 10, 2021 which included a demand for payment of income tax amounting to Php 4,131,802.25, inclusive of interest, surcharge, and penalty.[22] The FLD merely reiterated the Assailed Assessment stated in the PAN.[23] Moreover, the findings in the FAN/FLD in relation to the alleged undeclared purchases were merely copied from the PAN.[24]

In response to this, on January 7, 2022, PELCO III filed a Protest, particularly, a Request for Reinvestigation disputing the findings of the respondents in detail.[25] Thereafter, within the sixty-day period, or on March

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[19] *Ibid.*

[20] Records Vol. II, Exhibit **"P-22"** of the FOE, pp. 351-676, Reply to PAN dated 29 October 2021; Records, Vol. I, pp. 87-88; Answers to Question No. 76-78 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp.23.

[21] Records, Vol. I, Exhibit **"P-1"** of the FOE, pp. 351-676, Undated BIR Letter; *Records, Vol. I*; Answers to Question No. 76 and 82 of Judicial Affidavit of Ms. Urbano dated 30 Sept 2022, pp. 24 (pp. 88 of the Court Records, Vol. I).

[22] Records, Vol. I, p. 124-127, Exhibit **"P-1"**, Formal Letter of Demand dated 10 November 2021; *See* Exhibit "P-1" in the Judicial Affidavit of Ms. Urbano, (pp. 106-109 of the Court Records, Vol. I); *Records, Vol. I*, pp. 71-72; Answer to Question No. 21-24 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.7-8.

[23] *Ibid; Records, Vol. I*; Answer to Question No. 84 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.24.

[24] *Ibid.*

[25] Records, Vol. I, pp. 110-128, Exhibit "**P-2**", Protest by Request for Reinvestigation dated 06 January 2022; *Records, Vol. I*, pp. 73-74, Answer to Question Nos. 30-32 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.9-10. *Records, Vol. I*, Answer to Question Nos. 84 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p. 24-25.

8, 2022, PELCO III filed its Submission of Relevant Supporting Documents in support of the January 7, 2021 Protest.[26]

180 days passed from PELCO III's submission last March 8, 2022 but respondents have failed to act on petitioner's Protest.[27]

Following this inaction PELCO III appealed the Assailed Assessment by filing the instant Petition with this Court on October 4, 2022.[28]

After being issued Summons by this Court,[29] respondents filed their Answer on January 20, 2023.[30] Then, on January 25, 2023, respondents elevated the BIR Records.[31]

In a Resolution, dated January 31, 2023, a Notice of Pre-Trial Conference was issued by this Court.[32] On same date, respondent submitted the Judicial Affidavit of Revenue Officer ("RO") Maria Theresa C. Romanban.[33]

On April 3, 2023, petitioner[34] and respondents[35] filed their respective Pre-Trial Briefs. On April 11, 2023, the Pre-Trial Conference ensued.[36]

Thereafter, on May 10, 2023, the parties filed their Joint Stipulation of Facts and Issues.[37] A Pre-Trial Order was then issued by this Court on June 21, 2023.[38]

On July 18, 2023, petitioner presented its witness, Ms. Ma. Elizabeth D. Urbano.[39] Subsequently, on August 3, 2023, petitioner presented its witness, Mr. Delio I. Samulde.[40] r

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[26] *Records, Vol. I*, pp. 129-207, Exhibit "**P-3**", Supplemental Letter dated 07 March 2022; *Records, Vol. I*, pp. 74-75, Answer to Question Nos. 35-36 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.10-11. *Records, Vol. I*, Answer to Question Nos. 84 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p. 24-25.

[27] *Records, Vol. I*, Answer to Question Nos. 84-85 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p. 25-26.

[28] *Records, Vol. I*, Answer to Question Nos. 85 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p. 26; Records, Vol. I, Petition for Review, p. 6-221.

[29] Records, Vol. I, p. 222-225.

[30] Records, Vol. I, p. 234-251.

[31] Records, Vol. I, p. 252-255, Exhibit **"R-15".**

[32] Records, Vol. I, p. 257-258.

[33] Records, Vol. 1, p. 259-270, Exhibit **"R-16"**, Judicial Affidavit of Revenue Officer Maria Theresa C. Romanban.

[34] Records, Vol. I, p. 278-298.

[35] Records, Vol. I, p. 271-277.

[36] Records, Vol. I, p. 300.

[37] Records, Vol. I, p. 314-329.

[38] Records, Vol. I, p. 330-337.

[39] Records, Vol. I, p. 338-340.

[40] Records, Vol. I, p. 347-349.

On August 23, 2023, petitioner filed its Formal Offer of Evidence,[41] wherein respondents interposed certain objections through a Comment filed on September 8, 2023.[42] In a Resolution, dated October 20, 2023, this Court admitted petitioner's Exhibits except for Exhibits "P-41" to "P-48" as the same were not found in the records.[43]

On November 7, 2023, respondents placed RO Romanban in the witness stand.[44] On December 4, 2023, respondent filed his Formal Offer of Evidence,[45] to which petitioner interposed objections through a Comment and/or Objection filed on December 27, 2023.[46] In a Resolution, dated February 27, 2023, this Court admitted respondents' Exhibits except Exhibit "R-13".[47] In an Omnibus Motion filed on March 20, 2024, respondent appealed the denial of Exhibit "R-13".[48] However, this was opposed by petitioner in a Comment/Opposition filed on April 30, 2024.[49] In Resolutions, dated July 30, 2024 and November 27, 2024, this Court granted respondents' Omnibus Motion.[50]

On August 14, 2024, respondents filed their Supplemental Formal Offer of Evidence.[51] In a Resolution, dated November 27, 2024, petitioner's Supplemental Formal Offer of Evidence was admitted by the Court.[52]

On April 11, 2024, petitioner filed its Memorandum.[53] Meanwhile, respondents filed their Memorandum.[54] Hence, on February 3, 2025, the case was submitted for Decision.[55]

Hence, this Decision.

<u>The Issue</u>

> "Whether or not petitioner is liable to pay deficiency income tax in the amount of Php4,131,802.25, inclusive of interest, surcharge, and penalty, for taxable year 2018"[56]

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[41] Records. Vol. II, p. 351-676.
[42] Records, Vol. II, p. 677-680.
[43] Records, Vol. II, p. 681-683.
[44] Records, Vol. II, p. 685-686.
[45] Records, Vol. II, p. 687-695.
[46] Records, Vol. II, p. 696-713.
[47] Records, Vol. II, p. 714-718.
[48] Records, Vol. II, p. 719-724.
[49] Records, Vol. II, p. 793-799.
[50] Records, Vol. II, p. 800-804 and 813-816.
[51] Records, Vol. II, p. 806-810.
[52] Records, Vol. II, p. 813-816.
[53] Records, Vol. II, p. 725-791.
[54] Records, Vol. II, p. 818-854.
[55] Records, Vol. II.
[56] See Issue, Pre-Trial Order, Records, Vol. I, p. 332.

Arguments of the Parties

Petitioner's Arguments[57]

Petitioner avers that the assailed assessment is void for having been issued in violation of PELCO III's right to due process. The audit was conducted by an RO who was not authorized under a valid LOA. Moreover, the ROs did not evaluate and consider PELCO III's evidence during the administrative proceedings. Also, the ROs did not follow the prescribed minimum audit procedures under *Revenue Audit Memorandum Order ("RAMO") No. 01-00.* Likewise, the assailed assessment is based on presumptions, which are frowned upon by law and which do not enjoy the presumption of correctness.

Per petitioner, PELCO III, by the very nature of its franchise, is not liable for income tax. The assailed assessment should thus be immediately cancelled. PELCO III is a non-stock, non-profit electric cooperative duly organized under *P.D. No. 269* and enjoys permanent exemption from income taxes. Respondents' interpretation in the *MARELCO Ruling* and *RMC No. 74-2013* is contrary to law and to the fundamental policy of the state to promote the viability and growth of all cooperatives as instruments for social justice and economic development. Congress intends to exempt from income tax organizations which do not operate for profit and are owned and operated exclusively for the benefit of its members. Thus, cooperatives, whether registered with Cooperative Development Authority ("CDA") or NEA, enjoy tax incentives. PELCO III does not earn any taxable income because the excess of its total collections from its charges are not treated as revenue but as savings used/ utilized to pay/ fund its operating expenses, programs and projects for the benefit of its member-consumer owners. Assuming arguendo that PELCO III is subject to income tax, other assessed income tax items are not supported by facts and law, in violation of *Section 228 of the NIRC* and *Revenue Regulation ("RR") No. 12-99.* Even assuming that PELCO III is liable for the above-mentioned deficiency assessment items, it should not be held liable for any compromise penalties and interests.

Respondents' Arguments[58]

Respondents, meanwhile argue that the assessment is valid as there is no violation of petitioner's right to due process. The assessment is valid per respondents considering that it was conducted by ROs named in a valid LOA. Further, according to respondents, the assessment is valid as it contains factual and legal basis which were issued in accordance with the provisions of the *NIRC,* and its implementing rules and regulations. Thus, per

[57] See Memorandum for petitioner, Records, Vol. II, p. 732-767.
[58] See Memorandum for respondents, Records, Vol. II, p. 821-850.

respondents, petitioner is liable for deficiency income tax and administrative penalty. Following respondents' arguments, under the current state of law, electric cooperatives registered with the NEA are subject to income tax on certain sources; thus, petitioner is not exempt from income tax.

The Ruling of the Court

The instant Petition is meritorious.

The Court has jurisdiction over the instant Petition.

Although not specifically raised as an issue in the instant case, this Court must first rule whether or not it has jurisdiction over the present controversy. Undoubtedly, this Court can take cognizance of the present controversy. Jurisdiction by this Court over the instant case is conferred by ***Section 7 (1) of RA 1125, to wit:***

> ***SEC. 7. Jurisdiction. -*** The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;
> (Emphasis and underscoring, Ours)

In the instant case, petitioner is appealing respondents' inaction over the Protest, dated January 7, 2022,[59] filed by PELCO III to refute the income tax assessment contained in the FLD, dated November 10, 2021.[60] Clearly, the subject matter of the instant case is a disputed assessment referred to in the above cited provision that may be appealed before this Court. Accordingly, the said subject matter is within the jurisdiction of this Court and it may validly try the same as long as the appeal has been timely made.

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[59] Records, Vol. I, pp. 110-128, Exhibit "**P-2**", Protest by Request for Reinvestigation dated 06 January 2022; *Records, Vol. I*, pp. 73-74, Answer to Question Nos. 30-32 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.9-10. *Records, Vol. I*, Answer to Question Nos. 84 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p. 24-25.

[60] Records, Vol. I, p. 124-127, Exhibit **"P-1"**, Formal Letter of Demand dated 10 November 2021; *See* Exhibit "P-1" in the Judicial Affidavit of Ms. Urbano, (pp. 106-109 of the Court Records, Vol. I); *Records, Vol. I*, pp. 71-72; Answer to Question No. 21-24 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.7-8.

This Court also finds that petitioner timely filed its appeal. On December 9, 2021, PELCO I received the FLD, dated November 10, 2021.[61] In response to this, petitioner filed a Protest, particularly, a Request for Reinvestigation disputing the findings of the respondents in detail on January 7, 2022.[62] This is compliant with the 30-day period for filing protests to FLD/FAN. On March 8, 2022, it submitted its documents in support of the said Protest, well within the prescribed 60-day period from the date of filing of the Protest.

Under *Section 228 of the NIRC,* if a protest is not acted upon within one hundred eighty days from submission of the supporting documents[63], the taxpayer adversely affected by the inaction may appeal to the Court of Tax Appeals within thirty days from the lapse of the one hundred eighty day period.

In this case, PELCO III submitted the supporting documents on March 8, 2022 as provided. Respondents then had until September 5, 2022 to act upon PELCO III's Protest, September 4 being a Sunday. However, respondents did not respond nor act on the said Protest. Following respondents' inaction, PELCO III may appeal to this Court within 30 days from the lapse of the 180-day period from the submission of the supporting documents, or until October 5, 2022. Hence, this Petition was timely filed by petitioner on October 4, 2022.[64]

With the issue of jurisdiction settled, We shall now proceed to determine whether petitioner is entitled to the reliefs sought.

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[61] Records, Vol. I, p. 124-127, Exhibit **"P-1",** Formal Letter of Demand dated 10 November 2021; *See* Exhibit "P-1" in the Judicial Affidavit of Ms. Urbano, (pp. 106-109 of the Court Records, Vol. I); *Records, Vol. I*, pp. 71-72; Answer to Question No. 21-24 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.7-8.

[62] Records, Vol. I, pp. 110-128, Exhibit "**P-2**", Protest by Request for Reinvestigation dated 06 January 2022; *Records, Vol. I*, pp. 73-74, Answer to Question Nos. 30-32 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p.9-10. *Records, Vol. I*, Answer to Question Nos. 84 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p. 24-25.

[63] Under *Memorandum Circular No. 015-20,* February 12, 2020, the 180-day period is reckoned from the date of submission of the required documents, which should be within the 60-day period from filing of Protest in case you filed a protest for reinvestigation.

[64] *Records, Vol. I*, Answer to Question Nos. 85 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, p. 26; Records, Vol. I, Petition for Review, p. 6-221.

The present income tax assessment is void because an RO not authorized by the eLOA participated in the audit of petitioner's books of accounts and other accounting records.

Section 13 of the NIRC provides that an RO must be duly authorized by the CIR or his authorized representative pursuant to a valid LOA as a prerequisite for such RO to conduct a valid audit and examination of a taxpayer:

> Section 13. Authority of a Revenue Officer. — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

A taxpayer cannot ordinarily be examined unless the CIR himself, or his duly authorized representative, authorizes the RO to do so through an LOA.[65] There must be a grant of authority before any RO can conduct an examination or assessment; otherwise, the assessment or examination is a nullity.[66]

Thus, an LOA is undoubtedly necessary to the validity of an audit. In *Commissioner of Internal Revenue v. Royal Class Trading and Transport Corp.,*[67] the RO who recommended the PAN was not one of the ROs named in the LOA. The authority of the new examiner emanated only from a 3rd Indorsement issued by the Revenue District Officer—not an LOA. The assessment was consequently cancelled.

In *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*[68] the Court cited *RMO No. 43-90* and ruled that "if the revenue officers that were previously indicated in a LOA were reassigned or transferred to another case and as such, a new revenue officer will handle the case that was previously assigned to them, the issuance of a new LOA in favor of the new handling revenue officer is required." In the same case, the assessment was declared void due to the lack of authority of the RO who conducted the audit.

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65 Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, April 5, 2017, 808 PHIL 528-556.

66 Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010, 649 PHIL 519-537; Commissioner of Internal Revenue v. Lancaster Philippines, Inc., G.R. No. 183408, July 12, 2017, 813 PHIL 622-654.

67 CTA EB Case no. 1832 (CTA Case No. 8844), November 21, 2019.

68 Commissioner of Internal Revenue v. Manila Medical Services, Inc., G.R. No. 25547, February 13, 2023.

Likewise, in *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*[69], the Court held that the assessment is void when there is no separate or amended LOA issued for the new revenue officers who continue the audit or investigations:

> We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly R.MO No. 43-90 dated September 20, 1990.

In this case, the eLOA only authorized ROs Jonathan Balagtas and Jennifer Manio as well as GS Virginia Bangay to examine the books of accounts and other accouting records of PELCO III to determine tax liabilities for taxable year ending 2018.[70]

However, petitioner's own witness, RO Romanban, admitted during cross examination that she participated in the audit and examination of petitioner's books of accounts and other accounting records prior to the issuance of a the FLD/FAN, to wit:

JUSTICE MODESTO-SAN PEDRO:

Q: Okay, I have one question. At what stage was this case referred to you.

RO ROMANBAN:

A: Initial review.

JUSTICE MODESTO-SAN PEDRO:

Q: Was there already an FLD at this stage?

RO ROMANBAN:

A: None.

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[69] Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp., G.R. No. 242670, May 10, 2021.

[70] Records, Vol. II, Exhibit **"P-8"** of the FOE, pp. 351-676, Letter of Authority ("LOA") eLA201600028280 under LOA No. 21B-2019-00000311 dated September 9, 2019; Records, Vol. II, Exhibit **"P-9"** of the FOE, pp. 351-676, BIR's Request for Presentation of Documents; Records, Vol. I, pp. 76-77 Answer to Question Nos. 40-43 of Judicial Affidavit of Ms. Urbano dated September 30, 2022, pp.12-13.

JUSTICE MODESTO-SAN PEDRO:

Q: None yet. What was there?

RO ROMANBAN:

A: Only the audit report, memorandum report, and the endorsement of the docket."[71]

Records show, however, that RO Romanban's authority to examine and assess PELCO III was only pursuant to a mere Routing Slip No: 21B-1803 which was signed by M.B. Gopez.[72] She was not issued another LOA in her favor.

RO Romanban likewise testified that she examined the entire docket transmitted to her, memorandum report of the assigned revenue officers recommending the issuance of the PAN, the factual and legal basis on which the assessments were based, and the attached documents which includes the eLOA.[73] After the issuance of the PAN, RO Romanban said that she re-examined the case and made the same findings.[74]

Respondents tried to dispel the LOA requirement by claiming that RO Romanban was merely "reviewing" the findings and did not actually conduct an audit and examination of petitioner's books of accounts and other accounting records.[75] However, this Court cannot be deceived by such arguments. It must be noted that RO Romanban herself admitted in cross-examination that the dockets for the present case were referred to her prior to the issuance of an FLD/FAN. This means that, after the case was referred to her, she was expected to conduct further audit and examination of petitioner's books of accounts and other accounting records based on the Reply to PAN submitted by petitioner in order to make a recommendation for a final assessment of income tax liabilities (*i.e.,* contents of the FLD/FAN) against petitioner. Thus, she indeed participated in the audit and examination of petitioner's books of accounts and other accounting records albeit without a LOA validly issued in her favor.

Moreover, a circumspect inspection of the BIR Records would reveal that another person not named in the eLOA participated in the audit and examination of petitioner's books of accounts and other accounting records for the purpose of making an assessment of income tax liabilities against

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[71] TSN taken during the Hearing on 7 November 2023, pp. 13.
[72] Records, Vol. I, Exhibit **"R-14"**, Routing Slip No:21B-1803; Records, Vol. I, pp. 259-270. Judicial Affidavit of RO Romanban, Answer to Questions 7-8, p. 2.
[73] Judicial Affidavit of RO Romanban, Answer to Q19 and Q23.
[74] *Ibid.*
[75] Records, Vol. II, pp. 831-833, Memorandum for respondents.

petitioner. In a Memorandum,[76] addressed to Edgar B. Tolentino, Regional Director of RR No. 4, RO Jennifer R. Manio and GS Analyn A. Lagman recommended the issuance of a PAN against petitioner. It must be noted that only RO Manio was authorized to audit petitioner under the eLOA while GS Lagman is not, considering that the GS mentioned in the eLOA is Virginia Bangay. As GS Lagman was part of the revenue officers who recommended the issuance of a deficiency income tax assessment against petitioner, she necessarily also conducted an audit and examination of petitioner's books of accounts and other accounting records. This she did without a valid LOA authorizing her to perform such acts.

Since RO Romanban and GS Lagman were shown to have actively conducted an audit of PELCO III's TY 2018 books of accounts and other accounting records despite their lack of authority, the assailed assessment should be declared void as it was issued through the audit and examination by ROs who were not authorized under a valid LOA.

Electric cooperatives registered with the NEA are entitled to permanent income tax exemption.

Regardless of the findings made by the Court above as regards whether or not the ROs who conducted an audit of petitioner's books of accounts and other accounting records were properly authorized with a valid LOA, petitioner, being an electric cooperative registered with the NEA,[77] is permanently exempt from income tax.

In *Commissioner of Internal Revenue vs. Misamis Oriental II Rural Electric Service Cooperative, Inc. (MORESCO-II),*[78] the Court *En Banc* ruled that electric cooperatives registered with NEA enjoy permanent exemption from income tax, *viz.*:

> Electric cooperatives registered with the NEA enjoy permanent exemption from income tax, as provided by Section 39(a) of PD No. 269.' The afore cited provision provides, *to wit.:*
>
>> '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 cooperatives is necessary and appropriate:

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[76] BIR Records, pp. 253-256, Exhibit "R-13", Memorandum recommending the issuance of a PAN against petitioner.
[77] Exhibit **"P-5"**, PELCO III's Certificate of Franchise with Certificate No. 145 issued by the NEA on November 29, 1990.
[78] C.T.A. *EB* No. 2796, CTA Case No. 10145, February 28, 2025.

> (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.'

Subsequently, *Executive Order ("E.O.") No. 93*[79] was passed withdrawing all tax and duty exemptions of electric cooperatives:

> '**SECTION 1.** The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entitles are hereby withdrawn.'

Nonetheless, *Section 2* of the said law authorized the FIRB to determine whether to restore tax and/ or duty exemptions that were previously withdrawn, *viz.:*

> 'SECTION 2. The Fiscal Incentives Review Board created under Presidential Decree No. 776, as amended, is hereby authorized to:
>
> a) restore tax and/ or duty exemptions withdrawn hereunder in whole or in part;
>
> b) revise the scope and coverage of tax and/ or duty exemption that may be restored;
>
> c) impose conditions for the restoration of tax and/ or duty exemption;
>
> d) prescribe the date or period of effectivity of the restoration of tax and/ or duty exemption;

Y

[79] Withdrawing All Tax and Duty Incentives of the Fiscal Incentives Review Board, December 17, 1986

> e) formulate and submit to the President for approval, a complete system for the grant of subsidies to deserving beneficiaries, in lieu of or in combination with the restoration of tax and duty exemptions or preferential treatment in taxation, indicating the source of funding therefor, eligible beneficiaries and the terms and conditions for the grant thereof taking into consideration the international commitments of the Philippines and the necessary precautions such that the grant of subsidies does not become the basis for countervailing action.'

Thereafter, FIRE Resolution No. 24-87 was issued restoring all tax exemptions granted by P.D. No. 269 with qualification on income tax. The Resolution states that 'effective July 1, 1987 ... 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.'

Subsequently, R.A. No. 6938 was enacted enabling electric cooperatives to register under the Cooperative Development Authority ('CDA') to enjoy preferential tax treatments afforded to cooperatives. R.A. No. 6938 was further amended with the enactment of R.A. No. 9520.

Finally, the Congress passed R.A No. 10531, which amended P.D. No. 269.

Petitioner avers that Respondent failed to justify its claim for tax exemption. According to Petitioner, the permanent exemption granted to Respondent by P.D. No. 269 was withdrawn by E.O. No. 93 and was not reinstated by FIRB Resolution No. 24-87, which left the income of cooperatives taxable. Further, tax exemptions under the R.A. No. 6938 are granted only to cooperatives registered with the CDA. Since Respondent is not registered with the CDA, it follows that it is not entitled to income tax exemption.

We disagree.

In the case of Samar-I Electric Cooperative vs. Commissioner of Internal Revenue ('Samar-I v. CIR'), this Court En Banc ruled that an electric cooperative is exempt from minimum corporate income tax under P.D. No. 269, notwithstanding the provisions of E.O. No. 93 and FIRB Resolution No. 24-87 and despite said cooperative not being registered with the CDA under the Cooperative Code. The ruling was reached via two (2) conclusions, first is registration with the CDA was optional for cooperatives already registered with the NEA; and second, E.O. No. 93 is inconsistent with the Cooperative Code, which thus repealed the former.

The first conclusion was drawn from Rule III, Section 1 of the Omnibus Rules and Regulations on the Registration of Electric Cooperatives ('Omnibus Rules'), which uses the phrase 'shall choose' when discussing registration with the CDA by already existing electric cooperatives. This means that an electric cooperative that had previously registered with the NEA could simply opt not to register with the CDA. Such a choice would keep them governed by the provisions of P.D. No. 269, not R.A. No. 6938.

The second conclusion was made following Article 127 of R.A. No. 6938:

> 'ARTICLE 127. Repeals. - Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provisions of this Code shall be deemed repealed: Provided, however, That nothing in this Code shall be interpreted to mean the amendment of reveal of any provision of Presidential Decree No. 269; Provided, further, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof.'
>
> R.A. No. 6938 repealed all previous laws inconsistent with its provisions, while leaving P.D. No. 269 untouched. The Court En Banc in Samar-I v. CIR found that E.O. No. 93 was 'apparently' inconsistent with the R.A. No. 6938 and thus deemed the former's withdrawal of tax exemptions repealed by the latter.
>
> Combining these two conclusions, it was found in that case, that therein petitioner still enjoyed the exemption from income tax granted by P.D. No. 269 even without registering with the CDA.
>
> Indeed, this doctrine has been reaffirmed by the Court multiple times, such as in the recent case of Agusan Del Norte Electric Cooperative, Inc. v. Commissioner of Internal Revenue.
>
> Following this line of reasoning, while the bodies with which cooperatives must register differ, P.D. No. 269 and R.A. No. 6938 share a similar principle: to grant tax exemptions to registered cooperatives. E.O. No. 93 contradicts this by withdrawing such tax exemptions. R.A No. 6938 thus repeals said Executive Order while refraining from modifying P.D. No. 269. By extension, R.A. No. 6938 also repeals FIRB Resolution No. 24-87, insofar as said Resolution reiterates E.O. No. 93's withdrawal of income tax exemptions for cooperatives. As such, R.A. No. 6938 effectively reinstates the tax exemptions granted by P.D. No. 269 to electric cooperatives that had registered with the NEA.
>
> From the above, then, Respondent, in the case at bar, should not be declared liable for income tax, even in general. . . .

Again, since petitioner is an electric cooperative registered with NEA, it enjoys permanent exemption from income taxes pursuant to the tax exemption provided under *P.D. No. 269.*

With these, the Court deems it unnecessary to discuss the remaining issues raised in the Petition.

ACCORDINGLY, the Petition for Review filed by petitioner **PAMPANGA III ELECTRIC COOPERATIVE, INC.** is hereby **GRANTED.** The deficiency income tax assessment imposed against petitioner in the total amount of Php 4,131,802.25, inclusive of interests, surcharge and penalties, is hereby declared **NULL AND VOID.** The subject NIC, dated January 3, 2020, PAN, dated September 1, 2021, and FLD/FAN, dated November 10, 2021 are declared **NULL and VOID.**

Respondents are hereby **ENJOINED** from proceeding with the collection of the subject deficiency income tax assessment in whatever mode of collection.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

CORAZON G. FERRER-FLORES
Associate Justice

C E R T I F I C A T I O N

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice