REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NUEVA ECIJA II ELECTRIC COOPERATIVE, INC.- Area 2,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9605

Members:

DEL ROSARIO, *P.J., Chairperson*,
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

JUN 18 2020 9:10am

x- -x

RESOLUTION

DEL ROSARIO, P.J.:

For resolution is petitioner's "**Motion for Reconsideration**" filed through registered mail on February 6, 2020 and received by the Court on February 19, 2020, with respondent's "**Comment/Opposition Re: Petitioner's Motion for Reconsideration**" filed on March 13, 2020.

In its Motion, petitioner prays that the Decision promulgated on January 17, 2020 be set aside and a new one be rendered declaring the assessment issued against petitioner null and void. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed on June 2, 2017 by petitioner Nueva Ecija II Electric Cooperative, Inc.- Area 2 is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

In support thereof, petitioner contends that: (i) the Court has jurisdiction over the case since petitioner filed its Petition for Review within the reglementary period; (ii) the right of respondent to issue the alleged deficiency tax assessments against petitioner have already prescribed, thus, they cannot ripen into valid assessments; (iii) procedural law is for better administration of justice and should yield to substantive law if implementation thereof could cause injustice; and, (iv) this Court has ruled in a Decision promulgated on August 5, 2019 entitled "*Agusan Del Norte Electric Cooperative, Inc. vs. Commissioner of Internal Revenue* [1] that electric cooperatives registered under the national electrification commission are exempt from payment of income tax.

On the other hand, respondent maintains that the Court has no jurisdiction over the case since petitioner failed to file its Petition for Review within the reglementary period.

After a thorough evaluation of the parties' respective positions, the Court finds petitioner's arguments patently without merit.

To reiterate, there is **only one 180-day period** under Section 228 of the National Internal Revenue Code of 1997, as amended *vis-a-vis* Section 3.1.4 of Revenue Regulations No. 12-99, as amended, and such period is reckoned from the submission of all relevant documents. The relevant disquisition in the assailed Decision is quoted hereunder:

> "Records show that petitioner received the FLD and FAN on June 24, 2016. On July 22, 2016, petitioner filed a protest letter to the FLD and FAN. On September 19, 2016, petitioner submitted all the relevant documents in support of its protest. Thus, the CIR's authorized representative had 180 days from September 19, 2016 or until March 18, 2017 to decide on the protest.
>
> On September 28, 2016 (or on the 8th day from the submission of the relevant supporting documents on September 19, 2016), OIC-Regional Director Sabariaga already rendered a decision which was received by petitioner on October 7, 2016. **Petitioner elevated its protest to the CIR on November 4, 2016**. When respondent elevated its protest, the CIR had the remaining 134 days of the 180-day period or until March 18, 2017 within which to decide the protest. From March 18, 2017 (the 180th day), petitioner had thirty (30) days or until April 17, 2017 to appeal to the

[1] CTA Case No. 9376.

> CTA, if it so desires, **or** await the final decision of the CIR himself and appeal said CIR's final decision to the CTA within thirty (30) days from receipt thereof. **Respondent neither filed an appeal to the CTA within thirty (30) days from the lapse of the 180-day period on March 18, 2017 nor did it await the decision of the CIR himself.**
>
> Instead, petitioner mistakenly counted a new period of 180 days from **November 4, 2016** for the CIR to decide on the appealed decision of his authorized representative. Petitioner erroneously believed that it had thirty (30) days from the lapse of the 180-day period reckoned from November 4, 2016 or until June 3, 2017, within which to file a Petition for Review with the CTA. Accordingly, petitioner filed its Petition for Review on June 2, 2017.
>
> When the decision of the CIR's authorized representative was appealed to the CIR, **the running of the 180-day period remained to commence from September 19, 2016, the date when respondent submitted the relevant supporting documents in support of its protest;** the 180-day period was not interrupted nor tolled when petitioner appealed the decision of the CIR's authorized representative to the CIR.
>
> To emphasize, petitioner opted to appeal the CIR's inaction to the CTA, yet it filed its Petition for Review only on June 2, 2017 or **forty-four (44) days late, the last day of filing the Petition for Review being April 17, 2017**.
>
> Since the present Petition for Review was filed way beyond the thirty (30)-day reglementary period to appeal, the CTA was deprived of jurisdiction to take cognizance of the case. Thus, the Court cannot decide the case on the merits as the only power left with it is to dismiss the case."

Anent the Court's ruling in *Agusan Del Norte Electric Cooperative, Inc. vs. Commissioner of Internal Revenue*[2] that electric cooperatives registered under the national electrification commission are exempt from payment of income tax, regrettably, this issue is academic as the Court cannot make a determination thereon -- it having been deprived of jurisdiction to take cognizance of the present case.

Considering that **no new matter** invested with legal significance was raised by petitioner in its Motion for Reconsideration,

[2] CTA Case No. 9376.

the Court finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, petitioner's "**Motion for Reconsideration**" posted on February 6, 2020, is hereby **DENIED** for lack merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

(on leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice