REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MISAMIS ORIENTAL II RURAL ELECTRIC SERVICE COOPERATIVE, INC. (MORESCO-II),
Respondent.

CTA EB NO. 2796
(CTA Case No. 10145)

Present:
DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
FEB 28 2025 3:40 pm

x- x

DECISION

RINGPIS-LIBAN, ***J.:***

The Case

Before this Court is a Petition for Review filed by petitioner Commissioner of Internal Revenue ("CIR") on September 22, 2023, seeking the reversal of the Decision[1] dated February 28, 2023 ("assailed Decision") and the Resolution[2] dated August 11, 2023 ("assailed Resolution") promulgated by the Court of Tax Appeals ("CTA") Special Second Division[3] ("Court in Division") in CTA Case No. 10145, entitled *Misamis Oriental II Rural Electric*

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1 Docket, pp. 271-291.
2 *Id.*, 321-329.
3 Composed of Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David.

Service Cooperative, Inc. (MORESCO-II) v. Commissioner of Internal Revenue. The assailed Decision and Resolution granted MORESCO-II's Petition for Review, and enjoined the CIR from collecting income tax and compromise penalties from MORESCO-II pursuant to the Final Decision on Disputed Assessment ("FDDA") dated May 21, 2019.

The Parties

Petitioner is the duly appointed CIR who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. Respondent holds office at the Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City where he may be served with summonses, legal processes, orders and resolutions of the Honorable Court.[4]

Respondent MORESCO-II is a non-stock, non-profit electric cooperative, with principal office at Medina, Misamis Oriental. It was issued a Certificate of Registration by the National Electrification Administration ("NEA"), pursuant to Presidential Decree ("PD") No. 269.[5]

The Facts

On December 28, 2017, respondent was furnished a copy of Letter of Authority No. 097-2017-00000037/eLA201200015411 dated December 07, 2017 covering the period January 01, 2015 to December 31, 2015.[6] Subsequently, a Notice for Informal Conference[7] dated March 08, 2018, and an Amended Notice for Informal Conference[8] dated September 12, 2018, were issued to respondent. On October 29, 2018, respondent received a Preliminary Assessment Notice ("PAN") dated October 16, 2018.[9]

Respondent then filed a Protest Letter on November 28, 2018, contesting the issues raised in the PAN.[10] On December 20, 2018, respondent executed a Waiver of Defense of Prescription.[11] Thereafter, on January 15, 2019, respondent received a Formal Letter of Demand ("FLD") and Final

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4 Docket, Respondent's Pre-Trial Brief, Summary of Admitted Facts, Par. 1, p. 117.
5 *Id.*, Petition for Review, The Parties, Par. 1, p. 10.
6 *Id.*, Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts, Par. 3, CTA Case No. 10145, p. 228; Letter of Authority No. 097-2017-00000037/eLA201200015411 dated December 07, 2017, p. 32.
7 *Id.*, JSFI, Summary of Admitted Facts, Par. 4, p. 228; Notice for Informal Conference, p. 35.
8 *Id.*, JSFI, Summary of Admitted Facts, Par. 5, p. 228; Amended Notice for Informal Conference, p. 38.
9 *Id.*, JSFI, Summary of Admitted Facts, Par. 6, p. 229; Preliminary Assessment Notice, pp. 42-47.
10 *Id.*, JSFI, Summary of Admitted Facts, Par. 7, p. 229; Protest Letter, pp. 48-55.
11 *Id.*, JSFI, Summary of Admitted Facts, Par. 10, p. 229; Date of execution should be December 20, 2018 per BIR Records, p. 723.

Assessment Notice ("FAN") with Assessment Number RR16-097-001-2019 dated January 11, 2019.[12]

In a Letter[13] dated February 04, 2019, respondent protested the FAN/FLD.

On March 14, 2019, respondent received another Notice for Informal Conference dated March 13, 2019.[14]

Subsequently, on July 02, 2019, respondent received the FDDA dated May 21, 2019, wherein petitioner denied respondent's protest and held it liable for Php21,354,622.81 and Php25,000.00, representing deficiency income tax and compromise penalty, respectively, for taxable year ("TY") 2015.[15]

The Proceedings in the Special Second Division

Consequently, on July 30, 2019, respondent filed a Petition for Review before the Court in Division alleging that it is exempted from the payment of income tax under PD No. 269 and that petitioner's imposition of compromise penalties is improper.[16]

Summonses were personally served upon the CIR and the Office of the Solicitor General ("OSG") on August 9 and August 13, 2019, respectively.[17]

On August 23, 2019, petitioner filed a Motion for Additional Time to File Answer,[18] which the Court granted on August 28, 2019,[19] giving an additional period of thirty (30) days from August 24, 2019 or until September 23, 2019, within which to file Answer.

Petitioner subsequently filed another Motion for Additional Time to File Answer,[20] which the Court granted on September 24, 2019,[21] giving an additional period of thirty (30) days from September 23, 2019 or until October 23, 2019, within which to file Answer.

Thereafter, on October 07, 2019, petitioner filed his Answer.[22]

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12 *Id.*, JSFI, Summary of Admitted Facts, Par. 8, p. 229; Formal Letter of Demand and Final Assessment Notice with Assessment Number RR16-097-001-2019, pp. 63-72.
13 *Id.*, pp. 74-79.
14 *Id.*, JSFI, Summary of Admitted Facts, Par. 9, p. 229; Notice for Informal Conference, p. 81.
15 *Id.*, JSFI, Summary of Admitted Facts, Par. 11, p. 229; Final Decision on Disputed Assessment, pp. 88-90.
16 *Id.*, pp. 10-92.
17 *Id.*, p. 93.
18 *Id.*, pp. 95-98.
19 *Id.*, p. 99.
20 *Id.*, pp. 100-103.
21 *Id.*, p. 104.
22 *Id.*, pp. 105-114.

On November 07, 2019, during the Pre-Trial Conference, the case was referred to mediation.[23] Due to the parties' failure to reach an agreement before the Philippine Mediation Center Unit - CTA ("PMCU-CTA"), the Court, in the Resolution[24] dated March 01, 2021, lifted the suspension of the proceedings for the purpose of mediation and set the case for the continuation of Pre-Trial Conference on April 12, 2021.

After a series of resettings,[25] the Pre-Trial Conference was continued on November 17, 2021.[26]

In the Pre-Trial Order[27] dated March 11, 2022, the Court approved and adopted the parties' Joint Stipulation of Facts and Issues[28] and set the hearing for respondent's presentation of witness.

During trial, respondent presented testimonial and documentary evidence. It presented Ms. Ma. Leila Piastro,[29] respondent's Finance Services Department Manager, as its lone witness.

In the Order[30] dated March 14, 2022, the Court, noting that the case involves a purely legal issue, granted the parties a period of thirty (30) days from March 14, 2022 within which to file their respective memoranda.

Petitioner[31] and respondent[32] filed their respective Memoranda, and on May 5, 2022, the case was submitted for decision.[33]

Thereafter, the Court in Division promulgated the assailed Decision,[34] granting the Petition for Review of respondent. The dispositive portion of the Decision reads:

> "**WHEREFORE**, the above premises considered, the Petition for Review filed by petitioner Misamis Oriental II Rural Electric Service Cooperative, Inc. on 30 July 2019 is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ENJOINED** from collecting income tax and

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23 *Id.*, p. 134.
24 *Id.*, pp. 201-203.
25 *Id.*, pp. 210-212.
26 *Id.*, p. 226.
27 *Id.*, pp. 234-237.
28 *Id.*, pp. 228-232.
29 *Id.*, pp. 142-147; and Minutes of Hearing dated March 14, 2022, p. 238.
30 *Id.*, p. 239.
31 *Id.*, pp. 244-258.
32 *Id.*, pp. 259-265.
33 *Id.*, p. 269.
34 *Id.*, pp. 271-292.

compromise penalties from petitioner pursuant to the Final Decision on Disputed Assessment dated 21 May 2019.

SO ORDERED."

On March 20, 2023, petitioner filed a Motion for Partial Reconsideration[35] which was denied for lack of merit in the assailed Resolution,[36] the dispositive portion of which states:

"**WHEREFORE**, the foregoing considered, respondent's 'Motion for Partial Reconsideration Re: Decision dated 28 February 2023' filed on 20 March 2023 is hereby **DENIED** for lack of merit.

SO ORDERED."

The Proceedings in the Court of Tax Appeals En Banc

Subsequently, petitioner filed a Motion for Extension of Time to File Petition for Review[37] on September 06, 2023. On September 08, 2023, the Court *En Banc* granted the Motion for Extension of Time to File Petition for Review, giving petitioner an additional period of fifteen (15) days from September 07, 2023, or until September 22, 2023, within which to file his Petition for Review.[38]

On September 22, 2023, petitioner filed the present Petition for Review.[39]

In the Minute Resolution[40] dated October 31, 2023, the Court directed respondent to comment on the Petition for Review within ten (10) days from notice thereof.

Respondent, however, failed to file a comment as per Records Verification[41] dated February 12, 2024.

On February 28, 2024, the case was submitted for decision.[42]

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[35] *Id.*, pp. 293-316.
[36] *Id.*, pp. 324-329.
[37] *Rollo*, pp. 1-5.
[38] *Id.*, p. 6.
[39] *Id.*, pp. 7-59.
[40] *Id.*, p. 60.
[41] *Id.*, p. 61.
[42] *Id.*, p. 62.

Assignment of Error

Petitioner essentially raises a single ground in support of its petition, that is, the Court in Division erred in enjoining petitioner from collecting income tax and compromise penalties against respondent pursuant to the FDDA dated 21 May 2019.[43]

The Arguments of Petitioner

Petitioner argues that respondent is liable to pay deficiency income tax and compromise penalties for TY 2015. He advances the following arguments in support of the present Petition for Review, *viz.:*

1. An electric cooperative established under PD No. 269 is entitled to tax exemption privileges subject to the conditions stated in Fiscal Incentives Review Board ("FIRB") Resolution No. 24-87;

2. Since respondent was incorporated in May 21, 1968, its income from its electric service operations is subject to income tax as its tax exemption ended in May 13, 1998 or thirty (30) years after its incorporation;

3. There is nothing in Republic Act ("RA") No. 10531 which states that the income tax exemption of electric cooperatives under PD No. 269, as amended, has been totally reverted or restored, citing *Zambales Electric Cooperative I, Inc. (ZAMECO I) vs. BIR*;[44] and,

4. Respondent is liable for compromise penalties pursuant to Sections 250 and 255 of the National Internal Revenue Code ("NIRC") of 1997, as amended, and Revenue Memorandum Order ("RMO") No. 7-2015, as elucidated by jurisprudence.

The Ruling of the Court

Timeliness of Petition

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[43] *Id.*, Petition for Review, Assignment of Error, p. 10.

[44] *Zambales Electric Cooperative I, Inc. (ZAMECO I) vs. BIR*, CTA Case No. 10165, August 01, 2023.

Before delving into the merits, the Court *En Banc* shall first determine whether it has jurisdiction to take cognizance of the present petition.

Section 2, Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA"), as amended, provides:

> "Sec. 2. Cases within the jurisdiction of the Court *en banc*. -- The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
>
> (a) Decisions or resolutions on motion for reconsideration or new trial of the **Court in Division** in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies -- **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]"[45]

Furthermore, Section 3(b), Rule 8 of the RRCTA, as amended, provides:

> "Sec. 3. Who may appeal; period to file petitioner. – xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days** from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."[46]

The present Petition for Review falls within the scope of Sec. 2(a)(1) of the RRCTA as it seeks the review of the assailed Decision and assailed Resolution of the Court in Division in CTA Case No. 10145, finding respondent liable for income tax deficiency and compromise penalties. Thus, the Court *En Banc* has appellate jurisdiction over the subject matter of the present Petition for Review.

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45 *Emphasis and underscoring supplied.*
46 *Emphasis supplied.*

The Court notes that petitioner received a copy of the assailed Resolution on August 24, 2023.[47] Subsequently, petitioner timely filed a Motion for Extension of Time to File Petition for Review on September 06, 2023,[48] which was granted by the Court in the Minute Resolution dated September 08, 2023,[49] giving petitioner until September 22, 2023, within which to file his Petition for Review before the Court *En Banc*.

On September 22, 2023, petitioner personally filed his Petition for Review.[50] Clearly, the filing of the present Petition for Review was made within the prescribed period.

The Court *En Banc* therefore has acquired jurisdiction to take cognizance of the present Petition for Review.

We now proceed to the merits of the case.

The Court in Division correctly ruled on Respondent's permanent exemption from income tax

Electric Cooperatives registered with the NEA enjoy permanent exemption from income tax, as provided by Section 39(a) of PD No. 269, 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:
>
> > (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

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47 A copy of the assailed Resolution was served to the CIR on August 23, 2023 through the BIR Litigation Division and on August 24, 20243 through the OSG; Docket, p. 323.
48 Rollo, pp. 1-5.
49 *Id.*, p. 6.
50 *Id.*, pp. 7-29.

> 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."[51]

Subsequently, Executive Order ("E.O.") No. 93[52] was issued 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 entities 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;

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[51] *Emphasis supplied.*

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

> d) prescribe the date or period of effectivity of the restoration of tax and/or duty exemption;
>
> 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, FIRB Resolution No. 24-87[53] 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[54] 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[55].

Finally, the Congress passed R.A. No. 10531[56], 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.

53 July 14, 1987.
54 Cooperative Code of the Philippines, March 10, 1990.
55 Philippine Cooperative Code of 2008, February 17, 2009.
56 National Electrification Administration Reform Act of 2013, May 07, 2013.

In the case of *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*[57] ("*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[58] ("*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 repeal 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."[59]

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.

[57] C.T.A. EB Case No. 460 & 462, March 11, 2010, which was affirmed in *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

[58] Omnibus Rules and Regulations on the Registration of Electric Cooperatives Under Republic Act No. 6938, IRR of RA 6938, February 10, 1994.

[59] *Emphasis and underscoring supplied.*

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.*[60]

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. All in all, We see no reason to reverse the conclusion and ruling of the Special Second Division.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on September 22, 2023 is **DENIED** for lack of merit. Accordingly, the Decision dated February 28, 2023 and Resolution dated August 11, 2023 in CTA Case No. 10145 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(I join Presiding Justice Roman G. Del Rosario's Separate Opinion)
CATHERINE T. MANAHAN
Associate Justice

60 CTA Case No. 9386, August 05, 2019. This ruling was affirmed in CTA EB No. 2225, March 22, 2022.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

(With due respect, I join Presiding Justice Roman G. Del Rosario's Separate Opinion)
HENRY S. ANGELES
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>EN BANC</u>

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2796** (CTA Case No. 10145)
	Present:
-versus-	**DEL ROSARIO,** *<u>P.J.</u>* **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *<u>JJ.</u>*
MISAMIS ORIENTAL II RURAL ELECTRIC SERVICE COOPERATIVE, INC. (MORESCO-II), *Respondent.*	Promulgated: FEB 28 2025 9:40am

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SEPARATE OPINION

DEL ROSARIO, <u>P.J.</u>:

I vote to deny the Petition for Review, albeit on a different ground. While I submit that respondent Misamis Oriental II Rural Electric Service Cooperative, Inc., as an electric cooperative registered with the National Electrification Administration (NEA), is subject to income tax with respect to income derived from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements, the assessments issued by petitioner Commissioner of Internal Revenue (CIR) against respondent for the taxable year (TY) 2015, covering deficiency income tax and compromise penalty, must be declared void *ab initio* for having been issued in violation of respondent's right to due process.

Under the current state of law, electric cooperatives registered with the NEA are subject to income tax on certain sources

Respondent argues that the TY 2015 income tax assessment against it has no legal basis because, as an electric cooperative duly registered with the NEA, its income tax exemption is governed by Section 39(a)(1) of **PD No. 269**, as amended, which provision is still effective. The provision reads:

> "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; [*sic*] 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. x x x" *(Boldfacing supplied)*

There are two types of tax exemptions granted to electric cooperatives under the afore-quoted provision. The *first* pertains to a **permanent exemption from income tax,** and the *second* is a **time-bound exemption** from payment of all kinds of taxes, fees and charges, which shall last until December 31 of the thirtieth (30th) year from the cooperative's organization or conversion, or until it shall become completely free from debt, whichever comes first. In the case at bar, **respondent claims exemption under the first type.**

While Section 39(a)(1) of PD No. 269, as amended, unequivocally grants petitioner tax exemption from income tax, the Court is nonetheless enjoined to examine the entire body of laws and interpret a statute, not only to be consistent with itself, but also to harmonize it with other laws on the same subject matter, as to form a complete, coherent and intelligible system.[1] The Court is mandated to look into, trace and examine other succeeding statutes concerning the income tax exemption enjoyed by electric cooperatives.

Subsequent to PD No. 269, as amended, is the enactment of **PD No. 1955,** which took effect on October 15, 1984. Section 1 thereof provides:

> "SECTION 1. The provisions of any special or general law to the contrary notwithstanding, **all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts and other charges heretofore granted to private business enterprises and/or persons engaged in any economic activity are hereby <u>withdrawn</u>,** except those enjoyed by the following:
>
> (a) Those registered by the Board of Investments under Presidential Decree No. 1789, as amended by Batas Pambansa Blg. 391, and those registered by the Export Processing Zone Authority under Presidential Decree No. 66, as amended by Presidential Decree Nos. 1449, 1776, 1776-A and 1786;
>
> (b) The copper mining industry in accordance with the provisions of LOI 1416;
>
> (c) Those covered by international agreements to which the Philippines is a signatory;
>
> (d) Those covered by the non-impairment clause of the Constitution; and
>
> (e) Those that will be approved by the President of the Philippines upon the recommendation of the Minister of Finance." *(Boldfacing and underscoring supplied)*

Notably, electric cooperatives were not among the entities excepted from those whose tax exemption was withdrawn. Thus, the income tax exemption of electric cooperatives was **withdrawn effective <u>October 15, 1984.</u>**

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[1] *The Office of the Solicitor General (OSG) vs. The Honorable Court of Appeals and the Municipal Government of Saguiran, Lanao del Sur,* G.R. No. 199027, June 9, 2014.

On January 8, 1986, **PD No. 2008** was issued, which **restored the income tax exemption** of all cooperatives albeit with a deadline. Section 5(a) of said PD reads:

> "SEC. 5. Privileges of Cooperatives. — **Cooperatives which are in good standing as certified by the BCOD/MAF shall enjoy the following privileges:**
>
> "(a) **Exemption from income and sales taxes <u>until December 31, 1991:</u>** *Provided,* That a substantial portion of the net income of the Cooperative is returned to members in the form of interests and/or patronage refunds: *Provided, further,* **That those cooperatives whose tax exemption privileges under this Decree have already expired shall continue to enjoy such privileges but <u>in no case shall extension go beyond December 31, 1991</u>;** *Provided, finally,* That the cooperative's taxable income shall mean that portion of the Cooperative's income after deducting the interest and patronage funds paid to its members;" *(Boldfacing and underscoring supplied)*

Subsequently, President Corazon Aquino, who exercised legislative powers at that time,[2] issued **Executive Order (EO) No. 93** on December 17, 1986, which again **withdrew all tax and duty incentives** granted to government and private entities, subject to certain exceptions, *viz.:*

> "SECTION 1. The provisions of any general or special law to the contrary notwithstanding, **all tax and duty incentives granted to government and private entities are hereby <u>withdrawn,</u>** except:
>
> a) those covered by the non-impairment clause of the Constitution;
>
> b) those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;
>
> c) those enjoyed by enterprises registered with:
> (i) the Board of Investments pursuant to Presidential Decree No. 1789, as amended;
> (ii) the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;
> (iii) the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended;
>
> d) those enjoyed by the copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;

[2] Section 6, Article XVIII, Constitution. The incumbent President shall continue to exercise legislative powers until the first Congress is convened.

> e) those conferred under the four basic codes namely:
> (i) the Tariff and Customs Code, as amended;
> (ii) the National Internal Revenue Code, as amended;
> (iii) the Local Tax Code, as amended;
> (iv) the Real Property Tax Code, as amended;
>
> **f) those approved by the President upon the recommendation of the Fiscal Incentives Review Board."** *(Boldfacing and underscoring supplied)*

Once more, electric cooperatives were not included in the exceptions mentioned above. The reasonable reading would then be that the **tax and duty exemptions of electric cooperatives were likewise withdrawn, unless they eventually fall within the context of paragraph (f), above.**

Section 2 of EO No. 93 authorized the **Fiscal Incentives Review Board (FIRB)** to determine, among others, whether to restore the tax and/or duty exemptions withdrawn under the EO, to wit:

> "SECTION 2. The **Fiscal Incentives Review Board** created under Presidential Decree No. 776, as amended, **is hereby authorized to**:
>
> **a) <u>restore tax and/or duty exemptions withdrawn hereunder in whole or in part</u>;**
>
> **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**; x x x" *(Boldfacing and underscoring supplied)*

The withdrawal of the tax exemption of electric cooperatives under EO No. 93 was not implemented in view of the issuance by President Aquino of **Memorandum Order (MO) No. 65** dated January 21, 1987, **which suspended the withdrawal of tax exemption for electric cooperatives until June 30, 1987**, *viz.:*

> "**The implementation of Executive Order No. 93, insofar as electric,** agricultural, irrigation and local waterworks **cooperatives are concerned, is hereby suspended until June 30, 1987.**

> The Fiscal Incentives Review Board, in consultation with the aforesaid cooperatives, is hereby directed to review the existing fiscal incentives to these cooperatives and to submit its report to the Office of the President on or before June 30, 1987 in accordance with Section 2 of Executive Order No. 93.
>
> This Memorandum Order shall take effect immediately." *(Boldfacing supplied)*

Hence, during the effectivity of MO No. 65, electric cooperatives were not subject to income and sales taxes **until December 31, 1991**, in accordance with **PD No. 2008.**

On July 14, 1987, by virtue of its delegated power to restore tax exemptions withdrawn by EO No. 93, the **FIRB issued Resolution No. 24-87**, which reads:

> "BE IT RESOLVED, as it is hereby resolved, **That the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269** x x x, as amended, **are** **restored** **effective July 1, 1987: Provided, however, That income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable:** x x x.
>
> (SGD.) JAIME V. ONGPIN
> Secretary of Finance
> Chairman, FIRB" *(Boldfacing and underscoring supplied)*

With the promulgation of FIRB Resolution No. 24-87, the tax exemption granted to electric cooperatives under Section 39(a)(1) of PD No. 269, as amended, was effectively **restored** subject to the proviso that **income from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposit and yield or any other similar arrangements, remain to be taxable.**

In *Ernesto M. Maceda vs. Hon. Catalino Macaraig, Jr., in his capacity as Executive Secretary, Office of the President, et al.,*[3] the Supreme Court held that **EO No. 93** constitutes a valid delegation of legislative power to the FIRB in exercising its function of determining which tax exemptions may be restored. Similarly, in *Davao Oriental Electric Cooperative, Inc. vs. The Province of Davao Oriental,*[4] the

[3] G.R. No. 88291, May 31, 1991.
[4] G.R. No. 170901, January 20, 2009.

Supreme Court recognized the validity of **FIRB Resolution No. 24-87** and applied it to said case, albeit it involved an assessment for real property tax.

Thereafter, on May 7, 2013, Congress enacted **RA No. 10531,** amending PD No. 269, as amended, by inserting Section 32-A, which clarified the incentives granted to electric cooperatives that comply with the financial and operating standards set by the NEA.

There is nothing, however, in Section 32-A or in other provisions of RA No. 10531 which state that the income tax exemption of electric cooperatives under PD No. 269, as amended, has been totally reverted or restored. The rule is that tax exemptions must be clear and unequivocal. Any doubt as to whether a tax exemption exists is resolved against the taxpayer.[5]

The supposed permanent income tax exemption of electric cooperatives under Section 39(a)(1) of PD No. 269, as amended, which has been effectively withdrawn by subsequent legislation, was not entirely restored by FIRB Resolution No. 24-87. **Thus, at present, electric cooperatives registered with the NEA are subject to income tax with respect to income derived from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements.**

In fine, the state of law as it is now, does not confer absolute income tax exemption privilege to respondent.

At this juncture, I find it crucial to address the Court in Division and the Court *En Banc*'s ratiocinations.

The Court in Division's ratiocination

The Court in Division explained:

> "Whether or not this conditional restoration of petitioner's tax incentives still obtains, a review of subsequent laws affecting ECs must be made.

[5] Resolution, *Philippine Long Distance Telephone Company, Inc. vs. City of Davao and Adelaida B. Barcelona, in her capacity as the City Treasurer of Davao,* G.R. No. 143867, March 25, 2003.

> To reiterate[,] Section 127 of **RA 6938** provides that all other laws inconsistent with its provisions are considered repealed and that nothing in its provisions shall constitute a repeal or amendment of PD 269. The **repealing clause of RA 10531** provides:
>
> > **SEC. 18.** *Repealing Clause.* – Article 132(3) of Republic Act No. 9520 and Section 30 of Republic Act No. 9136 (EPIRA) on NEA's authorized capital stock are hereby repealed. Any other provision of law, presidential decree, executive order, or rules and regulations inconsistent with the provisions of this Act or with the rules and regulations issued pursuant thereto are hereby repealed or modified accordingly.
>
> RA 10531 is essentially an amendment of the provisions of PD 269. Although several amendments were made to PD 269, Section 39 of the decree which granted IT exemption to ECs was retained. Considering the above repeals, it would appear that the conditional restoration of an ECs' IT exemption made by FIRB Resolution No. 24-87 was already disregarded in favor of fully restoring the benefits of ECs under PD 269. xxx" *(Boldfacing supplied)*

The Court En Banc's ratiocination

Article 127 of **RA No. 6938**, which was enacted on March 10, 1990, reads:

> **"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 or repeal 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." (*Boldfacing supplied*)

According to the *ponencia*, previously, in *CIR vs. Samar-I Electric Cooperative, Inc.*[6] decided by the Court *En Banc*, a plain reading of Article 127 of the Cooperative Code shows that PD No. 269 is not amended nor repealed by the enactment of RA No. 6938. From this, it concluded that the exemption from paying taxes of electric cooperatives under Section 39 of PD No. 269 still applies. The Court took into consideration that RA No. 6938 has a later date in effectivity compared to FIRB Resolution No. 24-87, and that the latter is a mere resolution issued by a body created by the Office of

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[6] CTA *EB* No. 460 & 462, March 11, 2010.

the President while the Cooperative Code is a statute enacted by Congress.

Undersigned's separate opinion

That **RA No. 10531** does not intend to restore unconditionally the tax exemption of electric cooperatives was succinctly explained by the Court in Division in the case of *Zambales Electric Cooperative I, Inc. (ZAMECO I) vs. BIR*:[7]

> "A perusal of RA No. 10531 shows that the amendments to PD No. 269 relate to the functions and powers of the National Electrification Administration (NEA) and electric cooperatives, but do not address the tax exemption privileges provided under Section 39 of PD No. 269, as conditionally restored by FIRB Resolution No. 24-87.
>
> Noteworthy is the fact that Section 13 of RA No. 10531 inserts Section 32-A in PD No. 269 stating the incentives of electric cooperatives but does not expressly include, modify, or affirm the tax exemption privileges provided in Section 39 of PD No. 269.
>
> Inasmuch as RA No. 10531 is silent with respect to Section 39 of PD No. 269, this Court rules that said Section 39 of PD No. 269 has not been repealed, expressly or impliedly by RA No. 10531. Rather, the tax exemption privileges granted in Section 39 of PD No. 269 subsists, subject to the conditions set forth in FIRB Resolution No. 24-87.
>
> Had it been the intent of Congress to fully restore the tax exemption privileges or to fully repeal the same, an appropriate provision could have been made in RA No. 10531. The legislature is presumed to know all the existing laws on the subject.[8]"

Nothing in the language of **RA No. 10531** nor in **RA No. 6938** clearly and unambiguously indicates an intention to revert the full income tax exemption of electric cooperatives under PD No. 269, as amended. To reiterate, FIRB Resolution No. 24-87 is a valid delegation of legislative power by President Aquino. EO No. 93 bestowed upon the FIRB unconditional authority to restore tax exemptions, revise its scope, and impose conditions for its restoration, among others.

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[7] *Zambales Electric Cooperative I, Inc. (ZAMECO I) vs. BIR*, CTA Case No. 10165, December 13, 2023 (Resolution).
[8] *Leynes vs. Commission on Audit*, G.R. No. 143596, December 11, 2003.

Clearly, the authority of the FIRB to impose a conditional restoration of the tax exemption of electric cooperatives carries the weight of a valid legislative act, and may only be repealed expressly or by clear implication through a subsequent legislative act. No such statute has yet been enacted.

It bears repeating the rule in taxation that tax exemptions are strictly construed against the taxpayer.[9] They should only be granted by clear and unequivocal provision of law expressed in language too plain to be mistaken.[10] It follows then that any reversion or restoration of tax exemptions should likewise be laid out in an unambiguous manner that leaves no room for alternative interpretations.

The Court in Division then proceeded to cite **BIR Revenue Memorandum Circular (RMC) No. 72-2003** and **NEA Legal Advisory No. 18**, declaring that BIR and NEA's conclusions are highly persuasive as they are consistent with RA No. 6938 insofar as it affirms continuous effectivity of the provisions of PD No. 269.[11]

RMC No. 72-2003 issued by petitioner clarified the tax exemptions enjoyed by electric cooperatives registered with the NEA, *viz.:*

> "**A. Electric Cooperatives (ECs) registered with the National Electrification Administration (NEA) are exempt from:**
>
> X x x
>
> 3. **Income taxes** for which they are directly liable [P.D. No. 269, Sec. 39 (a)(1)]; x x x" *(Boldfacing supplied)*

A cursory look at a subsequent issuance of petitioner, however, reveals that it has already revised its position regarding this matter.

RMC No. 74-2013, issued on November 27, 2013, which circularized BIR Ruling No. 398-2013, provided that electric cooperatives registered with the NEA are subject to income tax in accordance with FIRB Resolution No. 24-87, to wit:

> "For the information and guidance of all internal revenue officials, employees and others concerned, quoted hereunder is the

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[9] *Commissioner of Internal Revenue vs. Philippine Long Distance Telephone Company,* G.R. No. 140230, December 15, 2005.
[10] Resolution, *Philippine Long Distance Telephone Company, Inc. vs. City of Davao and Adelaida B. Barcelona, in her capacity as the City Treasurer of Davao,* G.R. No. 143867, March 25, 2003.
[11] Ruling of the Court, Assailed Decision, CTA *En Banc* Docket, p. 46.

> full text of the BIR Ruling No. 398-2013 dated November 4, 2013, addressed to R.M. Veluz Accounting Firm, as follows:
>
> X x x
>
> Inasmuch as the FIRB Resolution No. 24-87 issued on June 14, 1987, which, however, expressly provides that "income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable," thus, restoring the duty and tax exemptions enjoyed by Electric Cooperatives established pursuant to PD 269 (Sec. 39) which were previously withdrawn, and that the said Resolution No. 24-87 was issued in compliance with the mandate of EO No. 93 which has been declared as a valid delegation of legislative power pursuant to the Maceda case, **there is no question that an electric cooperative established under PD 269 is entitled to the tax exemption privileges subject to the conditions stated in the FIRB Resolution.**
>
> **Accordingly, this Office opines that MARELCO's income from its electric service operations is subject to income tax.** X x x" *(Boldfacing supplied)*

From the issuance of RMC No. 74-2013 to the present, the CIR's position has aligned with FIRB Resolution No. 24-87, such that income generated from the electric service operations of electric cooperatives is now deemed subject to income tax.

The issuance of RMC No. 74-2013 was pursuant to the CIR's power to interpret other tax laws, such as Section 39(a)(1) of PD No. 269, as amended, in accordance with Section 4 of the NIRC of 1997, as amended. As an interpretative rule, RMC No. 74-2013 only aims to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Simply, it says what the statute means and refers to no single person or party in particular but concerns all those belonging to the same class which may be covered by the said rule.

Being a general interpretative rule, any construction or interpretation made under RMC No. 74-2013 redounds to the benefit of all concerned taxpayers, such as respondent. As elucidated by the Supreme Court in *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*:[12]

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[12] G.R. Nos. 187485, 196113 & 197156, October 8, 2013.

> "**Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03** from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional." *(Boldfacing supplied)*

In *San Roque,* the Supreme Court held that BIR Ruling No. DA-489-03 was a general interpretative rule which can be relied on by **all** concerned taxpayers since it was requested by an agency under the Department of Finance. What more in this case where RMC No. 74-2013 was issued by the CIR himself.

RMC No. 74-2013 was the prevailing issuance in TY 2015 and on the date respondent was required to file its Final Adjustment Return or Annual Income Tax Return (FAR/AITR) on April 15, 2016. From the foregoing, it is evident that respondent is not exempt from income tax on the income derived from its electric service operations.

Nevertheless, the subsequent discussion shows that the assessment for TY 2015 should be declared void for violating respondent's right to due process.

The assessment for TY 2015 violated respondent's due process rights

Even though not raised as an issue by the parties, the Court is not precluded in determining whether respondent's due process rights have been violated. As the Supreme Court held in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.:*[13]

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> SECTION 1. Rendition of judgment. - x xx

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[13] G.R. No. 183408, July 12, 2017.

> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Boldfacing supplied)*

It is worth noting that the parties in CTA Case No. 10145 admitted in their Joint Stipulation of Facts and Issues the genuineness and due execution of the PAN, Reply to the PAN, FLD, Protest to the FLD, and the FDDA.[14] Thus, the foregoing documents form part of the case records and may be considered by the Court in resolving the case.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.,*[15] the Supreme Court held that the CIR's failure to consider the taxpayer's Reply to the PAN and Protest to the FLD, and to provide an explanation why the arguments raised therein were rejected, are violative of the taxpayer's due process rights that renders the assessment void, *viz.:*

> "The facts demonstrate that **Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments**. There was clear inaction of the Commissioner at every stage of the proceedings.
>
> First, **despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued.** The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00,

[14] Par. 2, Summary of Admitted Facts, JSFI, CTA Case No. 10145 Docket, p. 228
[15] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

> without any discussion or explanation on the merits of Avon's explanations.
>
> xxx
>
> It is true **that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> Indeed, **the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process.** The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.
>
> xxx
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.**" *(Boldfacing supplied)*

In the case at bar, respondent's Reply to the PAN and Protest to the FLD, contain substantive arguments that go into the validity of the assailed assessments, *i.e.,* respondent's alleged income tax exemption under PD No. 269, as amended.

Scrutiny of the PAN and FLD reveal that they are identical, *sans* any reference to respondent's arguments. Except for minor adjustments in the computation of interest by petitioner, no substantial difference exists between these documents. The same is true for the FDDA, which showed minor adjustments in the computation of basic income tax deficiency, surcharge, and interest, and eliminated assessment items already paid by respondent. Petitioner failed to consider any of the arguments raised by respondent in its Reply to the PAN and the Protest to the FLD. Petitioner likewise failed to provide any justification as to why respondent's arguments in the Reply and Protest were rejected upon the issuance of the FDDA.

Considering that petitioner failed to observe the due process rights of respondent, the subject assessments are rendered void.

Being void assessments, they bear no fruit[16] and must be slain at sight.

ALL TOLD, I *VOTE* to DENY the Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

[16] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.