REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PAMPANGA I ELECTRIC COOPERATIVE, INC., *Petitioner,*	**CTA CASE NO. 10961** Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE and REGIONAL DIRECTOR JOSEPH M. CATAPIA in his capacity as the REGIONAL DIRECTOR OF REVENUE REGION NO. 4, CITY OF SAN FERNANDO PAMPANGA OF THE BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 23 2025 4:15 p.m.

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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 void the Formal Letter of Demand ("FLD") imposing a deficiency income tax assessment against petitioner in the aggregate amount of Thirty Three Million One Hundred Eleven Thousand One Hundred Ninety Seven and 07/100, inclusive of penalties and fines, for the taxable year 2018 ("TY 2018").[1]

[1] See Summary of the Case, Pre-Trial Order, *Rollo* Vol. I, at 725.

The Parties

Petitioner, **PAMPANGA I ELECTRIC COOPERATIVE, INC. ("PELCO I")**, 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.*[2] Its principal office is at Sto. Domingo, Mexico, Pampanga.[3] It is a duly registered taxpayer of the Bureau of Internal Revenue ("BIR") under Tax Identification No. 000-800-905-000 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").[4]

Meanwhile, respondent Commissioner of Internal Revenue ("CIR") is the Commissioner of the Bureau of Internal Revenue ("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.[5]

On the other hand, respondent Regional Director Joseph M. Catapia is sued in his capacity as the head of RR No. 4 of the BIR. RR No. 4 is the government agency, under the control and supervision of the CIR, which is involved in the collection of national internal revenue taxes. RR No. 4 is the Revenue Region where PELCO I is registered.[6]

The Facts

From September 6, 1994 up to present, PELCO I continues to hold a Certificate of Franchise authorizing it to operate an electric light and power service facility issued by the National Electrification Administration ("NEA").[7] PELCO I's franchise as an electric cooperative under the NEA is

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2 *Rollo* Vol. II, Exhibit **"P-6"**, PELCO I's Certificate of Franchise with Certificate No. 160 issued by the National Electrification Administration [NEA] on September 06, 1994, at 850; *Rollo* Vol. II, Exhibit **"P-47"**, PELCO I's Annual Income Tax Return (BIR Form No. 1702-EX) for Calendar Year 2018, CTA Records; *Rollo* Vol. II, Exhibit **"P-48"**, PELCO I's Audited Financial Statements ("AFS") for TY 2018, CTA Records; Answer to Question No. 4-9 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 2-4; *Rollo* Vol. II, Exhibit **"P-4"**, PELCO I's Certificate of Registration with OCN4RC0000269360 with the BIR, at 849; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 4-5 of Judicial Affidavit of Ms. Jackie Lou S. Peña ("Ms. Peña) dated August 17, 2022, at. 3.

3 *Rollo* Vol. I, Joint Stipulation of Facts and Issues (''JSFI''), at 1.

4 See Stipulation of Facts, Pre-Trial Order, *Rollo* Vol. II, at 725.

5 *Rollo* Vol. II, Joint Stipulation of Facts and Issues (''JSFI''), at 2; See Stipulation of Facts, Pre-Trial Order, *Rollo* Vol. II, at 726.

6 *Ibid.*

7 *Rollo* Vol. II, Exhibit **"P-5"**, PELCO III's Certificate of Franchise with Certificate No. 145 issued by the National Electrification Administration ("NEA") on November 29, 1990; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 9-10 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 3-4.

valid for a period of fifty years (50) from September 6, 1994, or until 2044.[8] PELCO I distributes electricity at reasonable costs to its member-consumer-owners.[9] PELCO I operates for its member-consumer-owners located in the areas of Magalang, Candaba, Sta. Ana, Mexico, Arayat, and San Luis.[10]

Former RR No.4 Regional Director Edgar B. Tolentino issued a Letter of Authority ("LOA") eLA201600049958 under LOA No. 21B-2019-00000322, dated September 16, 2019 ("eLOA"), to PELCO I covering TY 2018.[11] The eLOA stated that only revenue officers ("ROs") Mariel Gonzales and Therese Anne Mirano/Group Supervisor ("GS") Noel Miranda of RDO No. 21B were authorized to examine PELCO I's books of accounts and other accounting records for TY 2018.[12]

Thereafter, PELCO I received a Reassignment Letter, dated December 27, 2019, ("Reassignment Letter") notifying that the eLOA will be reassigned to GS Raul T. Pamintuan.[13] However, PELCO I did not receive any Letter of Authority with respect to the said authority of GS Pamintuan.[14]

Despite this, respondent continued with audit of PELCO I's books of accounts and other accounting records with the latter insisting to the former that it is not an income-generating entity considering that it is an electric cooperative.[15]

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[8] *Rollo* Vol. II, Exhibit **"P-5"**, PELCO III's Certificate of Franchise with Certificate No. 145 issued by the National Electrification Administration ("NEA") on November 29, 1990; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 12-13 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 4-5 and Answer to Question No. 85 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 24.

[9] *Rollo* Vol. II, Exhibit **"P-27"**, Sample Billing Statement with a billing period June 27, 2022 – July 26, 2022; *Rollo* Vol. II, Exhibit **"P-28"**, PELCO I's 39th Annual General Membership Assembly Booklet for Consumers (pages 30 to 31); *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 102-115 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 29-32.

[10] Records Vol. II, Exhibit **"P-5"**, PELCO III's Certificate of Franchise with Certificate No. 145 issued by the National Electrification Administration ("NEA") on November 29, 1990; Records Vol. I, Exhibit "P-50", Answer to Question No. 4 of Judicial Affidavit of Ms. Peña dated August 17, 2022, pp. 2.

[11] *Rollo* Vol. II, Exhibit **"P-7"**, Letter of Authority [eLOA] eLA201600049958 under LOA No. 21B-2019-00000322 dated 16 September 2019, at 851-852; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 41-42 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 11-12.

[12] *Ibid.*

[13] *Rollo* Vol. II, Exhibit **"P-8"**, Reassignment Letter dated 27 December 2019, at 853; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 46 and 84 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 13 and 24.

[14] *Ibid.*

[15] *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 46 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 13; *Rollo* Vol. II, Exhibit **"P-10"**, Print out of the SMS/ Text Exchange between GS Pamintuan and Ms. Jackie Lou Peña from September 16, 2020 until October 28, 2020, at 855; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 53-60 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 15-17; *Rollo* Vol. II, p. 854, Exhibit **"P-9"**, PELCO I's Logbook, CTA Records; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 46 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 13; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 46 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 13; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 57-60 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 16-17; *Rollo* Vol. II, Exhibits **"P-11" to "P-16"**, at 856-861.

PELCO I received a Notice of Discrepancy ("NoD") dated October 27, 2020.[16] The NoD showed deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), and miscellaneous tax ("MT"), inclusive of interest and compromise penalties.[17] Thereafter, RDO No. 21B issued against petitioner an undated and unsigned Response to Findings pursuant to *Section 228 of NIRC of 1997, as amended,* which laid down deficiency income tax assessment amounting to Php 57,492,792.94, deficiency VAT assessment amounting to Php 2,109,376.01, deficiency EWT amounting to Php 1,974,888.71, and MT amounting to Php 116,000.00.[18]

On November 3, 2020, PELCO I attended another discussion with the ROs to assert its position that it enjoys permanent income tax exemption under P.D. No. 269.[19] After which, petitioner paid and settled the following tax deficiency findings through the eFPS:

TAX DEFICIENCY FINDING	AMOUNT
VAT	Php 2,109,376.01[20]
EWT	Php 1,974,888.71[21]
MT	Php 116,000.00[22]

On 23 August 2021, PELCO I received a Preliminary Assessment Notice ("PAN") dated July 1, 2021 containing the deficiency IT assessment amounting to Php 32,324,803.18 and total fines and penalties amounting to Php 28,000.00.[23] In the Details of Discrepancy attached to the PAN, it cited two grounds to support its findings of PELCO I's alleged TY 2018 deficiency income tax. *First, Sec. 39 of PD No. 269* stating the period within which cooperatives are to enjoy exemption from taxes, imposts, duties, and fees; and *second, Revenue Memorandum Circular No. 74-2013 ("RMC No. 74-2013")*,

[16] *Rollo* Vol. II, Exhibit **"P-17"**, Notice of Discrepancy [NOD] dated October 27, 2020, at 862-863; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 46 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 13.

[17] *Ibid.*

[18] *Rollo* Vol. II, Exhibit **"P-18"**, RDO No. 21B's undated Response to Findings pursuant to Section 228 of NIRC of 1997, as amended, at 864; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 61-62 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 17-18.

[19] *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 46 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 13-14.

[20] *Rollo* Vol. II, Exhibits **"P-19"** and **"P-20"**, eFPS BIR Form No. 0605 (Payment Form) dated November 03, 2020 evidencing Value-Added Tax (VAT) payment and eFPS Payment Confirmation evidencing VAT payment, respectively, at 865-869; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 64-70 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 18-20.

[21] *Rollo* Vol. II, Exhibits **"P-21"** and **"P-22"**, eFPS BIR Form No. 0605 (Payment Form) dated November 03, 2020 evidencing EWT payment and eFPS Payment Confirmation evidencing EWT payment, respectively, at 870-874; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 64-70 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 18-20.

[22] *Rollo* Vol. II, Exhibits **"P-23"** and **"P-24"**, eFPS BIR Form No. 0605 (Payment Form) dated November 03, 2020 evidencing payment of Miscellaneous Tax and eFPS Payment Confirmation evidencing payment of Miscellaneous Tax, respectively, at 875-879; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 64-70 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 18-20.

[23] *Rollo* Vol. II, Exhibit **"P-25"**, Preliminary Assessment Notice (PAN) dated 01 July 2021, at 880-889; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 71 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 20.

in relation to *BIR Ruling No. 398-2013 dated November 4, 2013 ("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...*[24]

On September 6, 2021, PELCO I filed its Reply informing respondents that a request for reinvestigation will be filed thirty days from receipt of the FLD and Final Assessment Notice ("FAN").[25]

Thereafter, RR No. 4 issued the FLD, dated September 20, 2021, which PELCO I received only on October 26, 2021, reflecting the same assessment items in the PAN.[26] The FLD found PELCO I liable for deficiency income tax in the aggregate amount of Php 33,111,197.07, inclusive of penalties and fines.[27]

On November 25, 2021, PELCO I filed a Protest in the form of a request for reinvestigation ("Protest").[28] In the Protest, PELCO I argued that the deficiency IT assessment was void and PELCO I is exempt from income taxes since it is an electric cooperative that was organized under P.D. No. 269.[29]

Regional Director Joseph M. Catapia of RR No.4 subsequently sent a Letter, dated December 6, 2021, acknowledging receipt of PELCO I's Protest, dated November 25, 2021, and reminding it to submit supporting documents in relation to the said Protest.[30] On January 21, 2022, PELCO I submitted relevant supporting documents in support of the November 25, 2021 Protest.[31]

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[24] *See* Annex A of *Rollo* Vol. II, Exhibit **"P-25"**, Preliminary Assessment Notice (PAN) dated July 01, 2021, at 880-889; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 71-75 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 20-21.

[25] *Rollo* Vol. II, Exhibit **"P-26"**, Reply to PAN dated September 06, 2021, at 890; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 71-78 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 20-22.

[26] *Rollo* Vol. II, Exhibit **"P-1"**, Formal Letter of Demand (FLD)/ Final Assessment Notices (FANs) dated September 20, 2021, at 772-785; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 18-21 and 79 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 20-22.

[27] *Rollo* Vol. II, Exhibit **"P-1"**, Formal Letter of Demand (FLD)/ Final Assessment Notices (FANs) dated September 20, 2021, at 772-785.

[28] *Rollo* Vol. I, Exhibit **"P-2"**, Protest in the form of a Request for Reinvestigation dated November 25, 2021, at 117-133; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 18-26 and 79 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 20-22.

[29] *Ibid.*

[30] *Rollo* Vol. II, Exhibit **"P-4"**, BIR Letter dated December 6, 2021, at 848; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 30-32 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 9.

[31] *Rollo* Vol. II, Exhibit **"P-3"**, Supplemental Letter dated January 21, 2022, at 786-847; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 18 and 34-36 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 6 and 10.

On December 29, 2021, RO Janine Roque served upon PELCO I a second FLD even though she was not authorized with any eLOA.[32] The second FLD contained similar assessments as that of the FLD, dated September 20, 2021, which PELCO I received on October 26, 2021.[33]

Surprisingly, PELCO I received a new LOA eLA201700072326 under LOA No. 21B-2022-00000069, dated March 21, 2022, which authorized RO Roque and GS Jose Gil Reyes to conduct audit on PELCO I for TY 2018.[34]

Following respondents' inaction on petitioners' Protest, PELCO I filed the instant Petition before this Court on August 18, 2022.[35]

On September 13, 2022, Summons were issued to respondents to file an Answer to the Petition.[36] On November 14, 2022, respondents filed their Answer.[37]

Thereafter, the case was referred for Mediation.[38] However, Mediation was terminated on January 11, 2023 as the parties did not reach an agreement to mediate.[39]

On March 24, 2023, petitioner[40] and respondents[41] filed their respective Pre-Trial Briefs. On March 30, 2023, the Pre-Trial Conference ensued.[42]

Thereafter, on May 2, 2023, the parties filed their Joint Stipulation of Facts and Issues.[43] A Pre-Trial Order was then issued by this Court on June 22, 2023.[44]

On July 11, 2023, petitioner presented its witnesses, Ms. Jackie Lou S. Peña and Mr. Delio L. Samulde.[45]

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[32] *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 79 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 22.
[33] *Ibid.*
[34] *Rollo* Vol. II, Exhibit **"P-49"**, Letter of Authority eLA201700072326 under LOA No. 21B-2022-00000069 dated March 21, 2022, at 1149; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 79 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 22-23.
[35] *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 83 of Judicial Affidavit of Ms. Peña dated 17 August 2022, at 23-24; *Rollo* Vols. 1-2, at 1-604.
[36] *Rollo* Vol. II, at 605-606.
[37] *Id.*, at 613-629.
[38] *Id.*, at 632-633.
[39] *Id.*, at 640-645.
[40] *Id.*, at 646-672.
[41] *Id.*, at 673-677.
[42] *Id.*, at 679-682.
[43] *Id.*, at 683-723.
[44] *Id.*, at 724-731.
[45] *Id.*, at 744-746.

On July 31, 2023, petitioner filed its Formal Offer of Evidence.[46] In a Resolution, dated October 20, 2023, this Court admitted all of petitioner's Exhibits.[47]

It was only on January 25, 2024 that respondent elevated the BIR Records.[48] During the Hearing, dated February 29, 2024, respondents manifested that they will no longer present any evidence for the case.[49]

On April 1, 2024, petitioner filed its Memorandum.[50] Meanwhile, respondents failed to file a Memorandum.[51] Hence, on April 23, 2024, the case was submitted for Decision.[52]

Hence, this Decision.

The Issue

> "Whether or not petitioner is liable for the alleged deficiency income tax assessment in the aggregate amount of Php 33,111,197.07, inclusive of interest and compromise penalties, for TY 2018[53]

Arguments of the Parties

Petitioner's Arguments[54]

Petitioner avers that the assailed assessment is void because the audit was conducted by an RO who was not authorized under a valid LOA.

Further, petitioner argues that the assailed assessment is void for having been issued in violation of PELCO I's right to due process. The revenue officers did not follow the prescribed minimum audit procedures under *Revenue Audit Memorandum No. 01-00.* The assailed assessment is void because it lacks factual and legal bases, in violation of *Section 228 of the NIRC* and *Revenue Regulations No. 12-99, as amended, (RR No. 12-99).* The assailed assessment is based on presumptions, which is frowned upon by law and which does not enjoy the presumption of correctness.

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[46] *Id.*, at 747-1151.
[47] *Rollo* Vol. III, at 1153-1155.
[48] *Id.*, at 1160-1163.
[49] *Id.*, at 1167.
[50] *Id.*, at 1172-1248.
[51] *Id.*, at 1149.
[52] *Rollo* Vol. III.
[53] See Issue, Pre-Trial Order, *Rollo* Vol. II, at 726.
[54] See Memorandum, *Rollo* Vol. III at 1181-1224.

Per petitioner, PELCO I, by the very nature of its franchise, is not liable for income tax. The assailed assessment should thus be immediately cancelled. PELCO I 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 I 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 I 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 *RR No. 12-99.* Even assuming that PELCO I is liable for the above-mentioned deficiency assessment items, it should not be held liable for any compromise penalties and interests.

Respondents' Arguments[55]

Respondents, meanwhile argue that petitioner is not exempt from payment of income taxes; that the assessment is valid; and that petitioner is liable for deficiency income tax and administrative penalty.

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
> -

[55] See Answer, *Rollo* Vol. II, at 614-626.

> (1) **<u>Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,</u>** 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 November 25, 2021,[56] filed by PELCO I to refute the income tax assessment contained in the FLD, dated September 20, 2021.[57] 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.

As for whether or not petitioner timely filed its appeal, this Court rules in the affirmative. On October 26, 2021, PELCO I received the FLD, dated September 20, 2021.[58] In response, it filed a Protest by way of request for reinvestigation on November 25, 2021 which is compliant with the 30-day period for filing protests to FLD/FAN.[59] On January 21, 2022, it submitted its documents in support of the said Protest, well within the prescribed 60-day period from the 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,[60] 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 I submitted the supporting documents on January 21, 2022 as stated above. Respondents then had until July 20, 2022 to act upon PELCO I's Protest. However, respondents did not respond nor act on the said Protest. Following respondents' inaction, PELCO I 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 August 20, 2022. Hence, this Petition was timely filed by petitioner on August 18, 2022.

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[56] *Rollo* Vol. I, Exhibit **"P-2"**, Protest in the form of a Request for Reinvestigation dated November 25, 2021, at 117-133; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 18-26 and 79 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 20-22.

[57] *Rollo* Vol. II, Exhibit **"P-1"**, Formal Letter of Demand (FLD)/ Final Assessment Notices (FANs) dated September 20, 2021, at 772-785; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 18-21 and 79 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 20-22.

[58] *Ibid.*

[59] *Rollo* Vol. I, Exhibit **"P-2"**, Protest in the form of a Request for Reinvestigation dated November 25, 2021, at 117-133; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 18-26 and 79 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 20-22.

[60] 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.

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

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.[61] There must be a grant of authority before any RO can conduct an examination or assessment, otherwise the assessment or examination is a nullity.[62]

Thus, an LOA is undoubtedly necessary to the validity of an audit. In *Commissioner of Internal Revenue v. Royal Class Trading and Transport Corp.*,[63] 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.

In *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*,[64] 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

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

[62] 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.

[63] CTA EB Case no. 1832 (CTA Case No. 8844), November 21, 2019.

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

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.

Likewise, in *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*,[65] the Court held that the assessment is void when there is no separate or amended LOA issued for the new revenue officers who will 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, GS Pamintuan participated in the conduct of audit up until the issuance of the FAN as shown in PELCO I's communications with him via SMS/text message.[66] However, petitioner never received any LOA authorizing GS Pamintuan to join the audit of PELCO I's books of accounts and other accounting records.[67] PELCO I only received a Reassignment Letter signed by RDO No. 21B's Revenue District Officer Lindagrace B. Sagun notifying of the assignment of the original eLOA, dated September 16, 2019, to GS Raul T. Pamintuan.[68]

Further, petitioner later received eLOA eLA201700072326 under LOA No. 21B-2022-00000069, dated March 21, 2022,[69] issued by RR No. 4 Regional Director Joseph M. Catapia. Notably, GS Pamintuan is again not among the ROs authorized to conduct the audit.[70]

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

[66] *See Rollo* Vol. II, Exhibit **"P-10"**, Print out of the SMS/ Text Exchange between GS Pamintuan and Ms. Jackie Lou Peña from September 16, 2020 until October 28, 2020, at 855; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 53-60 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 15-17.

[67] *See Rollo* Vol. II, Exhibit **"P-8"**, Reassignment Letter dated December 27, 2019, at 853; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 46 and 84 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 13 and 24.

[68] *Ibid.*

[69] *See Rollo* Vol. II, Exhibit **"P-49"**, Letter of Authority eLA201700072326 under LOA No. 21B-2022-00000069 dated March 21, 2022, at 1149; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 79 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 22-23.

[70] *Ibid.*

As testified upon by petitioner's witness, Ms. Peña, PELCO I's submissions to GS Pamintuan were all done in good faith and that PELCO I merely cooperated with GS Pamintuan since he represented himself to be authorized, *viz.*:[71]

> Q : Ms. Witness, earlier you mentioned that you coordinated with GS Pamintuan in relation to the tax audit, why is this so?
>
> A: We received a Re-assignment Letter dated December 27, 2019, re-assigning GS Miranda to another Revenue District Office. That is why GS Pamintuan was re-assigned to our case. We are not aware during the consultation with our legal counsel that a BIR examiner should have a valid LOA prior to examination of the books of account.
>
> Q: Ms. Witness, you mentioned that the reason for the issuance is the assignment letter, is that formerly assigned to another RDO, correct?
>
> A: Yes.
>
> Q: You also confirm that in the other LOA, the BIR issued on March 21, 2022 which you identified as Exhibit "P-49", the reason for the issuance of said LOA authorized the newly BIR officer to conduct the audit of PELCO I 2018?
>
> A: Yes.
>
> Q: And you also confirm the reason is that because of transfer of the revenue officer to another district?
>
> A: Yes, Attorney.[72]

Despite GS Pamintuan's absence of authority, he still proceeded with the audit of petitioner. In fact, during the cross-examination, it was confirmed by Ms. Peña that PELCO I coordinated with GS Pamintuan through SMS and during his visit in their office:

> Q : In your Answer to Question 53, you mentioned that you coordinated with Group Supervior Pamintuan through sms?
>
> A: Yes.
>
> Q: So, that is the only instance you made communication with GS Pamintuan?
>
> A: Through sms and also he visited our office.[73]

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[71] Transcript of Stenographic Notes [TSN] taken during the Hearing on July 11, 2023, p. 10.
[72] TSN taken during the Hearing on 11 July 2023, pp. 10-11.
[73] TSN taken during the Hearing on July 11, 2023, p. 7.

During the re-direct examination, Ms. Peña further explained that GS Pamintuan in addition to performing supervision, also actively conducted the audit by requesting and requiring other documents to be submitted by petitioner:

> Q : You mentioned earlier that the group supervisor was involved in the tax audit, did he perform mere supervision only in the conduct of audit.
>
> A: Sometimes, he also requires documents.[74]

Clearly, GS Pamintuan participated in the examination of books of accounts for TY 2018 despite not being authorized with a valid LOA. Since GS Pamintuan actively conducted an audit of PELCO I's TY 2018 books of accounts and other accounting records despite the lack of authority thereof, the assailed assessment should be declared void as it was conducted by an RO who was 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, still, petitioner, being an electric cooperative registered with the NEA,[75] is permanently exempt from income tax.

In *Commissioner of Internal Revenue vs. Misamis Oriental II Rural Electric Service Cooperative, Inc. (MORESCO-II)*,[76] 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: y

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[74] *Ibid.*

[75] *Rollo* Vol. II, Exhibit **"P-5"**, PELCO III's Certificate of Franchise with Certificate No. 145 issued by the National Electrification Administration ("NEA") on November 29, 1990; *Rollo* Vol. I, Exhibit "P-50", Answer to Question No. 9-10 of Judicial Affidavit of Ms. Peña dated August 17, 2022, at 3-4.

[76] 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*[77] 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;

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

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

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 electri 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 CD"·\.. 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.

To the point of being repetitive, 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.*

ACCORDINGLY, the Petition for Review filed by petitioner **PAMPANGA I ELECTRIC COOPERATIVE, INC.** is hereby **GRANTED.** The deficiency income tax assessment imposed against petitioner in the total amount of Thirty Three Million One Hundred Eleven Thousand One Hundred Ninety Seven and 07/100, inclusive of penalties and fines, is hereby declared **NULL AND VOID.** The subject NoD, dated October 27, 2020, PAN, dated July 1, 2021, FLD, dated September 20, 2021, and the second FLD, issued by RO Janine Roque 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
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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