REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AGUSAN DEL NORTE ELECTRIC COOPERATIVE, INC.,
Respondent.

CTA *EB* No. 2225
(CTA Case No. 9376)

Present:

DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
OCT 07 2022 2:10pm

x - x

RESOLUTION

CUI-DAVID, J.:

Before the Court *En Banc* is petitioner's **Motion for Reconsideration (Re: Decision dated 22 March 2022)** filed through registered mail on April 12, 2022, and received by the Court *En Banc* on April 21, 2022, with the **Opposition of Respondent to Petitioner's Motion for Reconsideration (Re Decision dated March 22, 2022)** filed through electronic mail on July 12, 2022 and registered mail on July 11, 2022, and received by the Court *En Banc* on August 2, 2022.

On March 22, 2022, the Court *En Banc* promulgated a Decision,[1] denying the present Petition for Review and affirming the Decision[2] dated August 5, 2019 and Resolution[3] dated January 21, 2020 of the CTA Special First Division in CTA Case No. 9376. In its Decision, the Court *En Banc* sustained the cancellation of petitioner Commissioner of Internal Revenue (CIR)'s deficiency income tax and value-added tax (VAT) assessments against respondent Agusan Del Norte Electric Cooperative, Inc. for calendar year 2012 in the aggregate amount of ₱11,531,816.95, the dispositive portion of the assailed CTA *En Banc* Decision reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the August 5, 2019 Decision and the January 21, 2020 Resolution are **AFFIRMED**.
>
> **SO ORDERED**."

In the instant Motion, petitioner raises the following grounds for the Court *En Banc's* consideration, to wit:

I.

THIS HONORABLE COURT ERRED IN AFFIRMING THE COURT A *QUO's* RULING THAT THIS COURT HAS JURISDICTION OVER THE INSTANT CASE.

II.

THIS HONORABLE COURT ERRED IN AFFIRMING THE COURT A *QUO's* RULING THAT RESPONDENT IS NOT LIABLE FOR THE DEFICIENCY TAXES ASSESSED AGAINST IT.

As to the first ground, petitioner maintains that the Petition for Review initially filed by respondent in the court *a quo* is dismissible for failure to comply with a condition precedent, pursuant to Section 1(j), Rule 16 of the 1997 Rules of Civil Procedure. Petitioner insists that instead of waiting for the Regional Director of Revenue Region 17 – Butuan City to decide on its protest to the Formal Letter of Demand dated March 14, 2016, respondent prematurely filed another protest (Request for Reconsideration) on April 20, 2016 with the CIR. Petitioner continues that the Final Decision on Disputed

[1] Court *En Banc* Docket, pp. 144 to 167.
[2] *Id.*, pp. 25 to 54.
[3] *Id.*, pp. 55 to 57.

Assessment (FDDA) of the Regional Director of the Revenue Region 17 – Butuan City was issued on May 26, 2016, or less than a month after respondent's filling of the protest with the CIR. As such, petitioner argues that by hastily filing the said Request for Reconsideration with the CIR, respondent unjustifiably disregarded the doctrine of exhaustion of administrative remedies.

With regard to the second ground, petitioner asserts that respondent's reliance on Presidential Decree (PD) No. 269,[4] otherwise referred to as the "National Electrification Administration Decree", is misplaced. Petitioner argues that while respondent has been granted tax exemption under the said law, it was however conditioned that respondent shall operate in conformity with the provisions thereof, and that the exemption is for thirty (30) years or when the cooperative is completely free from indebtedness incurred by borrowing whichever event first occurs – that respondent cannot claim perpetual tax exemption under PD No. 269. Petitioner further points out that while it is true that the Fiscal Incentive Regulatory Board (FIRB) Resolution No. 24-87 restores the tax and duty exemption privileges of electric cooperatives, it is crystal clear however that income from their electric service operations and other sources including the interest income from bank deposits and yield or any other similar arrangement shall remain taxable.

Lastly, petitioner claims that respondent, not being registered with the Cooperative Development Authority (CDA), is indeed liable for VAT on its gross receipts in accordance with Section 106 of the National Internal Revenue Code (NIRC) of 1997, as amended.

On the other hand, in its comment, respondent argues that even a cursory reading of the present Motion for Reconsideration would readily show that the issues and arguments raised therein are rehash of the same grounds alleged in the Petition for Review, which already have been thoroughly considered and resolved by the Court *En Banc*, as well as the court *a quo*. Respondent submits that petitioner has

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[4] "CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES", August 6, 1973.

not presented any new matter to warrant the modification, much less reversal, of the Court *En Banc* Decision promulgated on March 22, 2022.

After due consideration, the Court *En Banc* finds petitioner's Motion for Reconsideration bereft of merit.

As correctly observed by respondent, the arguments proffered by petitioner in the instant Motion for Reconsideration are the same arguments brought forth in the previous pleadings and motions that petitioner filed in the court *a quo* and with the Court *En Banc*, which have already been considered and weighed upon.

In fact, petitioner's Motion for Reconsideration is mere replica of its Petition for Review with the Court *En Banc*. As pointed out in the Decision currently being assailed by the present Motion for Reconsideration, the issues raised by petitioner are but mere rehash of the grounds already evaluated and passed by the court a *quo*.[5] As such, to discuss them anew would be mere superfluity.

Hence, considering that there being no new matter or substantial issue raised by petitioner in its Motion for Reconsideration, the Court *En Banc* finds no compelling reason to reverse, amend, or modify the Decision promulgated on March 22, 2022.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 22 March 2022) is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] Decision, p. 22, Court *En Banc* Docket, p. 165.

x--x

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice