REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MISAMIS ORIENTAL RURAL ELECTRIC SERVICE COOPERATIVE I, INC. (MORESCO I),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9700

Members:

CASTAÑEDA, JR., ***Chairperson,***
MINDARO-GRULLA, ***and,***
BACORRO-VILLENA, ***JJ.***

Promulgated:
NOV 04 2019
9:10 a.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review filed by Misamis Oriental Rural Electric Service Cooperative I, Inc. (**MORESCO I/petitioner**), pursuant to Rule 8, Section 3(a)[1] of the Revised Rules of the Court of

[1] **SEC. 3**. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal [R]evenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (n)

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Tax Appeals (**RRCTA**), seeking the cancellation of Assessment Notices with Formal Letter of Demand (**FLD**) dated 22 February 2017[2] issued by respondent Commissioner of Internal Revenue (**CIR/respondent**).

THE PARTIES

Petitioner MORESCO-I is an electric cooperative, duly registered with the National Electrification Administration (**NEA**) pursuant to Presidential Decree (**PD**) 269.[3] It is also registered with the Bureau of Internal Revenue (**BIR**) and presents itself as a non-stock, non-profit membership cooperative formed for the purpose of supplying, promoting and encouraging the fullest use of electric service in the franchise area. It operates in Laguindingan, Misamis Oriental.

Respondent CIR, on the other hand, is the duly-appointed CIR vested with authority to administer and enforce internal revenue laws, including, among others, the power to issue tax assessments. He holds office at the BIR National Office Building, Diliman, Quezon City.

FACTUAL ANTECEDENTS

On 15 April 2013, petitioner filed its Annual Income Tax Return[4] (ITR) for taxable year 2012. On 04 December 2014, petitioner received a Letter of Authority[5] (**LOA**) with an Audit Checklist of Requirements[6] from the BIR. The LOA authorized Revenue Officer Ahmad Yadhari Bantuas (**RO Bantuas**) of Revenue District Office (**RDO**) No. 98, Cagayan De Oro City, to examine petitioner's books of accounts and records for verification of its tax liabilities for 2012.

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2 Exhibit "P-12".

3 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.

4 Exhibit "P-2".

5 SN: eLA201000061842/LOA-098-2014-00000353 dated 27 November 2014, Exhibit "P-3".

6 Exhibit "P-4".

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On 21 January 2015, petitioner also received a First Notice[7] signed by RO Bantuas, requiring the submission of mandatory documents for BIR's investigation.

On 06 February 2015, the BIR sent petitioner a Second and Final Notice[8], containing a similar demand to submit documents, with further instruction for it to do so within 10 days from the notice. Thus, on 11 February 2015, petitioner forwarded a compact disc (CD) to RO Bantuas, containing digital copies of the following documents: (1) inventory list; (2) general ledger; (3) sales register; (4) sales journal; (5) purchase journal; (6) cash/check disbursement; (7) general journal; (8) trial balance; (9) payroll register; (10) lapsing schedule; (11) schedule of receivables and liabilities; (12) external auditor worksheet; and, (13) audited financial statement (AFS).[9]

On 18 December 2015, petitioner executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code[10] **(NIRC) (first waiver)** allowing the BIR to assess and collect tax liabilities from it for the year 2012 until 31 December 2016.

Prior to the expiration of the first waiver, petitioner executed another waiver[11] on 16 November 2016 **(second waiver)** extending the BIR's authority until the end of the first taxable quarter of year 2017 or until 31 March 2017.

On 02 February 2017, petitioner received a Preliminary Assessment Notice[12] **(PAN)** wherein the BIR found its income tax return for 2012 deficient therefore, holding petitioner liable for the following amounts:

Tax Type	Basic	20% Interest	Total
Income Tax	23,709,487.13	17,782,115.35	**41,491,602.48**
Grand Total			**41,491,602.48**

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7 Dated 12 January 2015, Exhibit "P-5".
8 Dated 06 February 2015, Exhibit "P-7".
9 Transmittal, dated 10 February 2015; Exhibit "P-6".
10 Exhibit "P-8".
11 Exhibit "R-11", BIR Records, Folder 2, p. 1887.
12 Dated 12 January 2017, Exhibit "P-9", Division Docket, p. 32.

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The BIR further assessed petitioner for ₱25,000, as compromise penalty, for failing to file its quarterly income tax return.

Disagreeing with the assessment, petitioner filed its Protest against the PAN on 17 February 2017. It argued that it could not be liable for income taxes since PD 269 exempts it from payment thereof and that it is under the direct supervision of the NEA. In a letter dated 27 February 2017, the BIR denied petitioner's Protest mostly on the ground of deficiency in form. The BIR stated, among others, that the protest did not contain a request for reconsideration or reinvestigation that Revenue Regulation No. 12-99 required and that petitioner did not execute a waiver of the defense of prescription (a precondition to a protest as mandated by Revenue Memorandum Order (**RMO**) No. 20-90[13]), thereby rendering the protest ineffective.

Later, petitioner received Assessment Notices[14] with an attached FLD[15], dated 22 February 2017, holding petitioner liable for a tax deficiency amounting to ₱42,084,339.65, broken down as follows:

I.	**INCOME TAX**		
	Taxable Income per return		
	Add: Adjustments		
	Miscellaneous non-operating income	₱ 7,462,115.00	
	Disallowed Provision for impairment loss	5,578,989.00	
	Disallowed Provision for retirement benefits	5,400,000.00	
	Direct Credit to Members' Equity-Reinvestment Fund	60,590,519.76	₱ 79,031,623.76
	Total Adjustments		79,031,623.76
	Income tax due		₱ 23,709,487.13
	Less: Income taxes paid		-
	Deficiency Income Tax		₱ 23,709,487.13
	Add: Interest -20% p.a. (04.16.2013-02.28.2017)		18,374,852.52
	Total Income Tax Deficiency		**₱ 42,084,339.65**
II.	**COMPROMISE PENALTY**		
	Non-filing of quarterly ITR		₱ 25,000.00

Still later, petitioner sent another Protest[16], dated 10 April 2017, debating the BIR's findings in the FLD. Respondent never acted on petitioner's protest hence, the present petition.

[13] Proper Execution of the Waiver of the Statute of Limitations under the NIRC.
[14] BIR Form 0401, Exhibit "P-12", pp. 41-42.
[15] Exhibit "R-15", BIR Records, Folder 2, p. 1995.
[16] Exhibit "P-13".

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PROCEEDINGS BEFORE THE COURT

In its petition, petitioner contended essentially that (1) the assessment of tax liabilities has prescribed as it was issued beyond 3-year prescriptive period under Section 203[17] of the NIRC; (2) it is permanently exempt from payment of income tax under PD 269 and this is confirmed by Revenue Memorandum Circular (**RMC**) No. 74-2013[18] which exempts electric cooperatives; (3) direct credit to Member's Equity-Reinvestment Fund is not taxable as this is excluded in the computation of gross receipt; (4) BIR's disallowance of retirement benefits is unwarranted; (5) disallowance of the provisions for impairment loss for failure to submit supporting documents is erroneous; and, (6) the taxability of non-operating revenue for ₱7,462,115.00 is without legal basis.

Responding to the petition, respondent in his Answer stated, among others, that: (1) petitioner executed Waivers of the Statute of Limitations thus the period of assessment has not prescribed; (2), petitioner reported and recognized non-operating revenues of

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17 **Sec. 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

18 RMC 74-2013
Circularizing the tax implications of Electric Cooperatives (EC) registered with the National Electrification Administration (NEA) pursuant to BIR Ruling No. 398-2013 dated November 4, 2013

...

Moreover, all Electric Cooperatives registered with the NEA, shall be subject to the following:

1) 20% final income tax on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines;
2) 7.5% final income tax on interest derived from a depositary bank under the expanded foreign currency deposit system;
3) Capital Gains Tax on sales or exchanges of real property classified as capital assets or shares of stock;
4) Documentary stamp taxes on transactions of cooperatives dealing with non-members, except transactions with banks and insurance companies, Provided that whenever one party to the taxable document enjoys the exemption from DST, the other party who is not exempt shall be the one directly liable for the tax;
5) VAT billed on purchases of goods and services;
6) Value-added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity; and[,]
7) All other taxes for which the ECs are not otherwise expressly exempted by any law.

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₱7,462,115.00, which revenues are non-utility in character such as miscellaneous services and charges billed to customers etc...; (3) the provision for impairment of receivables failed to comply with Section 34(E)[19] of the NIRC; (4) the provision for retirement benefits was not substantiated with proof; (5) the bulk of assessment arose from addendum of the taxable income of the Reinvestment Fund for Sustainable Contribution or RFSC (or the member' contribution for capital expenditure; (6) during the investigation, it was discovered that .6367 for every kilowatt-hour was collected from every member-consumer and separately charged in the monthly electric bill; (7) the penalty and interest imposed were pursuant to the provisions of the NIRC; and, (8) petitioner is not exempted from payment of income tax as its exemption is only for 30 years counted from its date of incorporation date in 1968.

After the issues were joined, the Court notified the parties of a pre-trial conference and they were ordered to file their respective pre-trial briefs.[20] Subsequently, upon the Court's directive[21], the parties submitted their Joint Stipulation of Facts and Issues (**JSFI**) where the identities of the parties were stipulated as well as the genuineness and due execution of the following documents:

...

a. LOA No. 098-2014-00000353/e(LA) No. 201000061842 dated 27 November 2014;
b. BIR Audit Checklist of Requirements;

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19 **Sec. 34.** Deductions from Gross Income. - Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income;

...

(E) Bad Debts. -

(1) In General. - Debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year except those not connected with profession, trade or business and those sustained in a transaction entered into between parties mentioned under Section 36 (B) of this Code: Provided, That recovery of bad debts previously allowed as deduction in the preceding years shall be included as part of the gross income in the year of recovery to the extent of the income tax benefit of said deduction.

(2) Securities Becoming Worthless. - If securities, as defined in Section 22 (T), are ascertained to be worthless and charged off within the taxable year and are capital assets, the loss resulting therefrom shall, in the case of a taxpayer other than a bank or trust company incorporated under the laws of the Philippines a substantial part of whose business is the receipt of deposits, for the purpose of this Title, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.

20 Respondent's PTB filed on 31 January 2019, Division Docket, pp. 72-74.

21 Order dated 01 March 2018, id., p. 102.

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c. First Notice to submit mandatory documents by the BIR;
d. Second and Final Notice;
e. Waiver of the Defense of Prescription Under the Statute of Limitations executed 18 December 2015;
f. PAN;
g. Position Paper/Protest Letter;
h. Denial of the Position Paper/Protest against the PAN;
i. FLD; and,
j. Protest Letter with Request for Reconsideration

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After the pre-trial, petitioner presented Eugenio L. Velasco (**Velasco**), petitioner's Finance Services Department Manager. On the other hand, respondent presented RO Regine S. Macas (**RO Macas**) and RO Maricel Arthur (**RO Arthur**).

In the trial that ensued, Velasco, who aside from identifying petitioner's exhibits, testified about the execution of the second waiver by Mr. Nonito M. Labis (**Labis**). According to him, although there were waivers, the taxable year under audit investigation was 2012 and petitioner filed its ITR on 15 April 2013. The first waiver executed expired on 31 December 2016 after its execution on 18 December 2015. He added that, petitioner received the PAN only on 02 February 2017 and the FLD on 15 March 2017. Petitioner filed a Protest Letter[22] stating that the assessment had no factual and legal basis since it is an electric cooperative and thus exempt permanently from any tax liability. In the previous years, the BIR had already affirmed its exemption citing Section 39 of PD 269[23] and RMC No. 72-2003.[24]

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22 Exhibit "P-10".

23 **Sec. 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, 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

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Velasco continued to declare that, later or on 07 February 2017, the BIR denied petitioner's protest and issued to the latter an FLD demanding the payment of an income tax deficiency in the amount of ₱42,084,339.65 and ₱25,000.00, as penalty. Petitioner again protested the FLD yet the BIR still denied the same.

During his cross-examination, Velasco stated that, at the time the second waiver was executed, Labis was petitioner's President. The second waiver gave the BIR until 31 March 2017 to assess petitioner.[25] On re-direct examination, he testified that the second waiver was not preceded by a board resolution authorizing Labis to execute a waiver on petitioner's behalf.[26]

Subsequently, after a Commissioner's Hearing for the purpose of authenticating petitioner's exhibits, petitioner filed its Formal Offer of Evidence (**FOE**).[27] With the respondent's comment, the Court

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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.

(b) The National Power Corporation shall, except with respect to the National Government, give preference in the sale of its power and energy to cooperatives, and shall otherwise provide the maximum support of and assistance to cooperatives of which it is capable, including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from itself, or from other sources. In pursuance of the foregoing policy, the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power and energy which without regard to the location of the point of delivery thereof, will be utilized and consumed within any area franchised to a cooperative.

24 Tax implications of Electric Cooperatives registered with the National Electrification Administration and Cooperative Development Authority.

25 TSN dated 10 May 2018, p. 10.

26 Id., p. 12.

27 Exhibit "**P-1**" - Board of Resolution No. 2017-0928-05, authorizing its Board of Directors President, Agustin Caberte and OIC General Manager Collen Tarcelo, to jointly represent petitioner in initiating the filing of the Petition;
Exhibit "**P-2**" - Annual Income Tax Return for taxable year 2012;
Exhibit "**P-3**" - Letter of Authority No. 098-2014-00000353/e(LA) No. 201000061842 dated 27 November 2014;
Exhibit "**P-4**" - BIR Audit Checklist of Requirements;
Exhibit "**P-5**" - First Notice to submit mandatory documents by the BIR;
Exhibit "**P-6**" - Transmittal Letter dated 10 February 2015 as proof of compliance of the BIR's notice to submit soft and hard copies of the required documents;
Exhibit "**P-7**" - Second and Final Notice;
Exhibit "**P-8**" - Waiver of the Defense of Prescription Under the Statute of Limitations;
Exhibit "**P-9**" - Preliminary Assessment Notice;
Exhibit "**P-10**" - Position Paper/Protest Letter;
Exhibit "**P-11**" - Denial of the Position Paper/Protest against the PAN;
Exhibit "**P-12**" - Formal Letter of Demand (FLD);
Exhibit "**P-13**" - Protest Letter with Request for Reconsideration; and,
Exhibit "**P-14**" - Judicial Affidavit of Eugenio Velasco.

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resolved[28] to admit all exhibits except Exhibits "P-2"[29] and "P-6"[30] for petitioner's failure to present their originals.

Trial continued and respondent presented RO Macas[31] and RO Arthur[32], both testified on the veracity of respondent's exhibits as well as to their roles in the investigation and assessment of petitioner.

For her part, RO Macas, RO I of RDO No. 101 of Iligan City, Lanao Del Norte, testified that petitioner's case was assigned to her for review. She went through the tax docket and found the assessment on petitioner to be correct. As a result, she recommended the issuance of PAN and the same was issued to petitioner (along with the detailed computation of discrepancies). Although the latter protested, their office found its arguments unmeritorious hence the FLD was issued thereafter. Again, petitioner sought reconsideration but it was denied.

RO Arthur, on the other hand, testified that she conducted the audit and investigation of petitioner for taxable year 2012 after RO Bantuas was transferred to another BIR Office and through a Memorandum of Assignment, petitioner's case was given to her. According to her, a computerized matching on an information provided by third party sources was made against petitioner's declarations (per VAT returns disclosed discrepancies). A letter-notice was sent and petitioner responded and explained the supposed discrepancy that resulted from her investigation and audit. A second and final notice was also sent. She maintained that petitioner assented to comply with BIR's request but since the documents were voluminous, she conducted the audit at petitioner's office. During the audit, Labis and other officers of petitioner were present. A Waiver of the Defense of Prescription, under the Statute of Limitations of the NIRC extending the period to assess to not later than 31 December 2016, was executed. Still later or on 16 November 2016, another waiver was issued and the period to assess was to expire on 31 March 2017.

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28 Resolution dated 04 October 2018, Division Docket, pp. 184-185.
29 Annual Income Tax Return for taxable year 2012.
30 Transmittal Letter dated 10 February 2015 as proof of compliance of the BIR's notice to submit soft and hard copies of the required documents.
31 Order dated 19 November 2018, Division Docket, p. 187.
32 Order dated 21 January 2019, id., p. 189.

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RO Arthur also testified that, after her audit, she recommended the issuance of PAN against petitioner.[33] She based her recommendation on her findings that petitioner had non-operating revenue of ₱7,462,115.00. This represented revenues which were non-utility in character such as miscellaneous services and charges billed to customers, provisions of services to other entities, rental of general property, interests and other revenues not considered as operating revenues. According to RO Arthur, it was also found that petitioner deducted from its income ₱5,578,989.00 as provision for impairment of receivables although there was no proof that the provision was written off as required in the NIRC and RR 25-2002. Likewise, petitioner deducted from its income retirement benefits of ₱5,400,000.00 although there was no corresponding proof of its actual payment. Lastly, the bulk of assessment arose from the addendum to taxable income of the Reinvestment Fund for Sustainable Capital Expenditure or RFSCE amounting to P60,590,519.76. Moreover, during the investigation, it was discovered that .6367 for every kilowatt-hour was collected from every member-consumer and separately charged in the monthly electric bill.

Subsequently, respondent filed his FOE and the Court, in a Resolution[34] dated 08 March 2019, admitted his offered exhibits.[35] The

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[33] See Memorandum dated 14 November 2016, Exhibit "R-10".

[34] Division Docket, pp. 204-205.

[35] Exhibit "**R-1**" - Letter Notice No. 098-RLFTRS-12-00-00294;
Exhibit "**R-2**" - Letter dated 04 July 2014;
Exhibit "**R-3**" - Letter of Authority with No. LOA-098-2014-00000353/SN:eLA201000061842 dated 27 November 2014;
Exhibit "**R-4**" - First Notice dated 12 January 2015;
Exhibit "**R-5**" - Second and Final Notice dated 06 February 2015;
Exhibit "**R-6**" - Memorandum dated 26 October 2015;
Exhibit "**R-7**" - Memorandum of Assignment with No. 0982014LOA8032 and dated 03 December 2015;
Exhibit "**R-8**" - Letter dated 10 December 2015;
Exhibit "**R-9**" - Waiver of the Defense of Prescription under the Statute of Limitations of National Internal Revenue Code extending the period to assess not later than 31 December 2016;
Exhibit "**R-10**"- Memorandum dated 14 November 2016;
Exhibit "**R-11**"- Waiver of the Defense of Prescription under the Statute of Limitations of National Internal Revenue Code extending the period to assess not later than 31 March 2017;
Exhibit "**R-12**"- Letter dated 17 November 2016;
Exhibit "**R-13**"- Charge Slip;
Exhibit "**R-14**"- Preliminary Assessment Notices dated 12 January 2017 together with attached Annexes A and B captioned as Detailed Computation of Discrepancies and Facts, Laws, Rules and Regulations as Basis of the Assessment;
Exhibit "**R-15**"- Formal Letter of Demand dated 22 February 2017;
Exhibit "**R-15-A**"- Formal Letter of Demand dated 22 February 2017;
Exhibit "**R-15-B**"- Detailed Computation of Discrepancies and Details of Discrepancies;

Court also ordered the filing of memoranda from both parties but only respondent complied. *Sans* petitioner's memorandum, the case was submitted for decision.[36]

ISSUES

I.
WHETHER PETITIONER IS LIABLE TO PAY THE ASSESSED DEFICIENCY TAXES FOR TAXABLE YEAR 2012;

II.
WHETHER THE ASSESSMENT OF THE ALLEGED TAX LIABILITIES HAS ALREADY PRESCRIBED;

III.
WHETHER THE MEMBER'S EQUITY-REINVESTMENT FUND IS SUBJECT TO INCOME TAX; AND,

IV.
WHETHER CONTRIBUTIONS TO PETITIONER'S RETIREMENT BENEFITS IS SUBJECT TO TAX.

RULING OF THE COURT

After a careful scrutiny of the records, particularly of the evidence presented, the Court resolves to grant the petition on grounds as discussed below.

In the instant case, while petitioner did not raise the issue of lack of authority of the revenue officers to conduct the audit, this Court could nevertheless take cognizance of issues that are essential to carry out its mandate, that is, to secure a just disposition of cases brought before it[37]; notwithstanding that such issues may have not been

Exhibit "**R-15-C**"- Audit Result/Assessment Notice with No. RR-16-098-038-2017;
Exhibit "**R-15-D**"- Audit Result/Assessment Notices with No. RR-16-098-038-2017;
Exhibit "**R-16**"- Letter dated 14 September 2017;
Exhibit "**R-17**"- Folder 1 of the BIR Investigation Records; and,
Exhibit "**R-17-A**"- Folder 3 of the BIR Investigation Records.

36 Resolution dated 30 July 2019, Division Docket, p. 233.

37 Revised Rules of the Court of Tax Appeals, Rule 1.

...

SEC. 2. *Liberal construction.*- The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.

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specifically raised by the parties themselves.[38] It is settled that it is well within the Court's authority to consider in its decision the question on scope of authority of revenue officers who were named in the LOA, even though the parties had not raised the same in their pleadings. In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[39], the Supreme Court enunciated:

> ...
>
> 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.* —
> >
> > 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.
>
> ...

In herein case, what is in issue is the assessment for deficiency taxes for calendar year 2012. In determining the validity of such assessment, a review of the revenue officers' authority to conduct the audit which resulted to the assessments is intrinsically related to the issue of the validity of the assessments.

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[38] Rule 14. JUDGMENT, ITS ENTRY AND EXECUTION.
SECTION 1. *Rendition of judgment.* — ...
...
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.

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

The BIR Records show that LOA No. 098-2014-00000353/e(LA) No. 201000061842[40] dated 27 November 2014, was issued authorizing RO Bantuas to examine petitioner's books of accounts and other accounting records for taxable year 2012, under the supervision of Group Supervisor Benjamin Conding. Accordingly, petitioner's records were forwarded to RO Bantuas.

During the trial, respondent presented RO Arthur and RO Macas as witnesses to prove petitioner's tax liability for taxable year 2012.[41] The records show that the authority to investigate petitioner was transferred to RO Arthur *via* Memorandum of Assignment No. 0982014LOA8032[42], signed by a certain Venerando B. Homez. This fact is bolstered by her testimony in her Judicial Affidavit[43] wherein she states:

> ...
>
> Q8: Why are you familiar with the case?
>
> A8: **I am the one who conducted the audit and investigation of Misamis Oriental I Electric Cooperative, Inc. or MORESCO I** for short, the petitioner in this case, for the taxable year 2012 **after Revenue Officer Ahmad Yadhari Bantuas was transferred after pursuant to Revenue Travel Assignment Order No. 43-2015.** [44]
>
> ...

The FLD of 22 February 2017 sent to petitioner also confirms that its case was re-assigned to RO Arthur. The FLD reads -

> ...
>
> Please be informed that in the result of investigation on all internal revenue tax liabilities for the taxable year 2012 by Revenue Officer Ahmad Yadhari Bantuas pursuant to **Letter of Authority No. 098-2014-00000353/eLA201000061842** dated November 27, 2014 and **Letter Notice No. 098-RLFTRS-12-00-00294** and has been reassigned to Revenue Officer Maricel D. Arthur per Memorandum of Assignment No. 0982014LOA8032, it was ascertained that there is due from you the total amount of ***Forty-two Million Eighty-four***

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[40] Supra at note 5.
[41] Division Docket, pp. 140-163.
[42] Exhibit "R-7", BIR Records, Folder 2, p. 1669.
[43] Division Docket, pp. 140-153.
[44] Id., p. 145. (emphasis supplied).

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> ***Thousand Three Hundred Thirty-nine pesos and 65/100 (P42,084,339.65)...***
>
> ...

A scrutiny of the LOA No. 098-2014-00000353/eLA201000061842 reveals that it does not include the names of RO Arthur or RO Macas as officers authorized to conduct the audit and examination. Thus, it appears that RO Arthur continued the investigation on petitioner despite the lack of a corresponding LOA authorizing her to conduct the same. Nothing in the records also show that a subsequent LOA was issued in RO Arthur's favor. As disclosed clearly in the FLD (and even in the PAN), the transfer of authority to RO Arthur was done through a mere memorandum of assignment, in complete contravention of the pertinent provisions of the NIRC. Section 6 of the NIRC provides -

> ...
>
> **Sec. 6.** *Power of the Commissioner to Make [A]ssessments and Prescribe [A]dditional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> ...

Likewise, Section 13 of the NIRC states further:

> ...
>
> **Sec. 13.** *Authority of a Revenue Offices.* — 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.
>
> ...

x - x

Moreover, petitioner's own rules, specifically, RMO No. 43-90[45] mandates the issuance of a new LOA in cases of reassignment or transfer of examination to another revenue officer. It reads –

> ...
> Any reassignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.
> ...

From the foregoing, there can be no clearer evidence but that there was no new LOA issued for RO Arthur (more so for RO Macas) to conduct the investigation on petitioner.[46] As both are without LOAs, their investigation and subsequent assessment of petitioner's tax deficiency could not be sanctioned. The importance of the LOA is underscored in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[47], to wit:

> ...
> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives...
>
> ...
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly

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45 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit dated 20 September 1990. (underscoring supplied).

46 Supra at note 37.

47 G.R. No. 222743, 05 April 2017.

x - x

> authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.
>
> ...
>
> ... To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made...
>
> ...
>
> ... In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.
>
> ...

The Supreme Court citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[48] went on to state:

> ...
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**
>
> ...

48 G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.

x - x

To reiterate, the LOA is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit, it is an express grant of authority.[49] Without the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation per RMO No. 43-90, there can be no perceived authority to conduct the investigation/audit.

Due to the nullity of the assessments made by respondent, it becomes unnecessary for this Court to address the other arguments raised as they are not yet ripe for judicial determination.

WHEREFORE, the foregoing considered, the Petition for Review filed by petitioner Misamis Oriental Rural Electric Service Cooperative I, Inc. is **GRANTED**. Accordingly, the Preliminary Assessment Notice dated 12 January 2017 and Assessment Notice with Final Letter of Demand dated 22 February 2017 issued against petitioner are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[49] *Nikken Philippines, Inc. v. CIR*, CTA EB No. 1569, 07 June 2018.

x - x

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice