21-000319-0076

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NOS. 10587 & 10632

NUEVA ECIJA I ELECTRIC COOPERATIVE, INC.,
Petitioner,

- versus -

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,
Respondents.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

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REGIONAL DIRECTOR JOSEPH M. CATAPIA
Bureau of Internal Revenue
Revenue Region No. 4
City of San Fernando, Pampanga

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GREETINGS:

You are hereby notified by these presents that on **May 27, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 28, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

NUEVA ECIJA I ELECTRIC COOPERATIVE, INC., *Petitioner,*	**CTA Case Nos. 10587 & 10632**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *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, *Respondents.*	Promulgated: MAY 2 7 2024 ; 1:55PM

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves:

1. Petitioner's "**Motion for Partial Reconsideration (of the Decision dated 14 November 2023) with Motion for Supplemental Relief**" filed *via* registered mail on December 1, 2023, with respondents' "**Comment and Opposition (Re: Motion for Partial Reconsideration dated 01 December 2023)**" filed on January 15, 2024; and,

2. Respondents' "**Motion for Reconsideration (Re: Decision dated November 13, 2023)**" filed on December 5, 2023, with petitioner's "**Comment/ Opposition (to Respondents'**

Motion for Reconsideration dated 29 November 2023)" filed on January 9, 2024.

At the outset, petitioner preliminarily posted a "Motion for Supplemental Relief" with its "Motion for Partial Reconsideration" on December 1, 2023, stating that its bank account with China Bank has been garnished by respondents. Petitioner eventually filed a "Request for Permission to Withdraw Motion for Supplemental Relief" on March 7, 2024 upon learning that its bank account with China Bank was not actually garnished.

The Court, in the Resolution dated March 26, 2024, granted petitioner's aforesaid "Request for Permission to Withdraw" and declared the same withdrawn. Thereafter, the Court submitted the parties' respective Motions for Reconsideration for resolution.

The parties' respective Motions seek full or partial reconsideration of the Court's Decision dated November 13, 2023, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petitions for Review in **CTA Case Nos. 10587** and **10632** are both **GRANTED**. Assessment No. 23B-R301004687 and its resulting Warrant of Distraint and/or Levy No. 2021-RR4-AMS-000100 covering taxable year 2012, and Assessment No. 23B-14-04-011879 and its resulting Warrant of Distraint and/or Levy No. 2021-RR-004-AMS-000090 covering taxable year 2013, are all **CANCELLED** and **SET ASIDE**.
>
> The Resolutions dated April 19, 2022 and July 1, 2022 ordering the suspension of the collection of taxes against petitioner are hereby **MADE PERMANENT**. Accordingly, the Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency income tax assessments against petitioner for taxable years 2012 and 2013. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court, as amended.
>
> **SO ORDERED**."[1]

In its Motion, petitioner prays that the Court partially reconsider its Decision dated December 14, 2023 and/or issue an Amended Decision clarifying that petitioner Nueva Ecija I Electric Cooperative, Inc. (NEECO1), in taxable years (TY) 2012 and 2013, and at present, continues to be permanently exempt from income tax.

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[1] *Docket*, Vol. IV, p. 1659.

On the other hand, respondents, in their Motion, seek the reversal and setting aside of the assailed Decision, and prays that a new one be rendered denying the Petitions for Review.

Petitioner's arguments in its Motion for Partial Reconsideration

In support of its Motion, petitioner essentially assails the conclusions in the assailed Decision, which *in esse* declares that under the current state of law, electric cooperatives registered with the National Electrification Administration (NEA) are not subject to permanent income tax exemption. Allegedly, *(i)* the conclusions in the assailed Decision contravene the constitutionally enshrined policy of the State directing Congress to promote the viability and growth of cooperatives as instruments for social justice and economic development; *(ii)* the conclusions run contrary to existing pertinent laws which recognize the legislative intent behind providing income tax exemption to organizations which do not operate for profit and are owned and operated exclusively for the benefit of its members, such as NEA Cooperatives; and, *(iii)* an implementation of the conclusions will result in a violation of the principle of administrative feasibility of taxation.

In their "Comment/Opposition" to petitioner's "Motion for Partial Reconsideration", respondents counter-argue that petitioner is not exempt from payment of income tax as it failed to overcome the burden of proving its exemption.

Respondents' arguments in their Motion for Reconsideration

In praying for the reversal of the assailed Decision, respondents assert that: *(i)* the Court has no jurisdiction over the Petitions for Review covering TYs 2012 and 2013 as they were filed beyond the mandated period; *(ii)* petitioner is not exempt from payment of income taxes; thus, liable for deficiency income tax for TYs 2012 and 2013; *(iii)* the Revenue Officers (RO) for TY 2013 were duly authorized to conduct the tax audit examination of petitioner; and, *(iv)* the Court erred when it decided that petitioner's right to due process was violated.

In its "Comment/Opposition" to respondents' "Motion for Reconsideration", petitioner retorts that: *(i)* the Court has jurisdiction over the subject Petitions; *(ii)* NEECO1 remains permanently exempt from income tax and this is supported by the 1987 Constitution and existing laws; *(iii)* the Court correctly found that the ROs who conducted the audit of NEECO1 for TY 2013 were not clothed with the proper authority; and, *(iv)* the Court has correctly found that respondents violated NEECO1's right to due process.

THE COURT'S RULING

After a careful evaluation of the parties' arguments in their respective Motions for Reconsideration, the Court resolves to deny the same.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings and conclusions.[2] It is thus incumbent upon the movant to convince the Court that certain findings and conclusions in the assailed Decision are not supported by evidence or are contrary to law.

Petitioner's Motion for Partial Reconsideration

Petitioner contends that with the ratification of the Constitution on February 2, 1987, the Fiscal Incentives Review Board's (FIRB) interpretations and conditions no longer became binding on electric cooperatives registered with the NEA, as the duty to determine the fiscal incentives of NEA cooperatives shifted to Congress pursuant to Section 15, Article XII of the 1987 Constitution.[3]

Petitioner's contention is bereft of merit.

There is nothing in Section 15, Article XII of the 1987 Constitution which shows that the power of the FIRB delegated to it for the determination of which tax exemptions may be restored, was

[2] Section 2, Rule 37 of the Rules of Court.
[3] Section 15, Article XII, Constitution. "The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development."

withdrawn. In fact, Section 6, Article XVIII of the 1987 Constitution[4] recognized the power of then-President Corazon C. Aquino to issue Executive Orders (EOs) that have the status of law. In *Ernesto M. Maceda vs. Hon. Catalino Macaraig, Jr., et al.*,[5] the Supreme Court ruled that President Aquino, who exercised legislative powers at that time, validly delegated the power to the FIRB to determine which tax exemptions may be restored, *viz.*:

> "**When E.O. No. 93 [series of 1986] was issued, President Aquino was exercising both Executive and Legislative powers**. Thus, there was no power delegated to her, rather **it was she who was delegating her power. She delegated it to the FIRB, which, for purposes of E.O. No. 93 [s. 1986], is a delegate of the legislature. Clearly, she was not sub-delegating her power**.
>
> And E.O. No. 93 [s. 1986], as a delegating law, was complete in itself -- it set forth the policy to be carried out and it fixed the standard to which the delegate had to conform in the performance of his functions, both qualities having been enunciated by this Court in *Pelaez vs. Auditor General*." (*Boldfacing supplied*)

Petitioner likewise invokes Section 32-A(c) of Presidential Decree (PD) No. 269, as amended by Republic Act (RA) No. 10531, as basis for the alleged income tax exemption of NEA-registered electric cooperatives. The provision reads as follows:

> "SEC. 32-A. *Incentives of Electric Cooperatives*. – Consistent with the declared policy of this Act, **electric cooperatives which comply with the financial and operational standards set by the NEA shall enjoy the following incentives**:
>
> xxx xxx xxx
>
> (c) **To avail of the preferential rights granted to cooperatives under** Republic Act No. 7160, otherwise known as the 'Local Government Code of 1991', and **other related laws**. x x x" (*Boldfacing supplied*)

It is petitioner's position that the phrase "other related laws" mentioned in the above-quoted provision includes RA No. 9520 or the Cooperative Code of the Philippines, Article 61 of which provides that "[c]ooperatives transacting business with both members and non-members shall not be subjected to tax on their transactions with members."

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[4] Section 6, Article XVIII, Constitution. "The incumbent President shall continue to exercise legislative powers until the first Congress is convened."
[5] G.R. No. 88291, June 8, 1993.

Upon judicious review of the relevant statutes, however, the Court maintains that petitioner is not exempt from payment of income tax.

The rule applied with undeviating rigidity in the Philippines is that for a tax exemption to exist, **it must be so categorically declared in words that admit of no doubt**.[6] Tax exemptions cannot arise from vague inference; they must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[7]

Section 32-A of PD No. 269, as amended by RA No. 10531, does not in any way provide for the permanent income tax exemption of electric cooperatives registered with the NEA. What the law states is that these cooperatives are merely granted the opportunity to "avail of the **preferential rights** granted to cooperatives" under the Local Government Code and "other related laws".

But even assuming that electric cooperatives enjoy income tax exemption under Section 32-A(c) of PD No. 269, as amended, in relation to RA No. 9520, petitioner is still not entitled to such privilege. As clearly stated in the said provision, the incentives granted therein shall only be availed by "electric cooperatives which comply with the financial and operational standards set by the NEA". Records reveal, however, that petitioner failed to offer in evidence any proof that it complied with such conditions under the law, *i.e.*, certification or any document issued by the NEA attesting to petitioner's compliance with its financial and operational standards.

Likewise, petitioner cannot seek refuge under Section 30 of the National Internal Revenue Code of 1997, as amended, which provides for a list of corporations exempt from payment of income tax. Evidently, an electric cooperative is not among those enumerated therein. Even if an entity is considered to be non-stock and non-profit, such entity would not automatically exempt it from payment of income tax. As provided for in the last paragraph of Section 30, "income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities

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[6] *Bases Conversion and Development Authority, et al. vs. City Government of Baguio City, et al.*, G.R. No. 192694, February 22, 2023, citing *Commissioner of Internal Revenue vs. Antonio G. Guerrero, et al., et seq.*, G.R. Nos. L-19074 & L-19089, January 31, 1967.
[7] *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, et al.*, G.R. No. 156040, December 11, 2008.

conducted for profit regardless of the disposition made of such income, shall be subject to tax[.]" Thus, non-stock, non-profit corporations are liable to income tax depending on the source of the income.[8] In turn, these taxable sources of income were explicitly provided for in FIRB Resolution No. 24-87.

With respect to petitioner's contention that the assailed Decision's interpretation violates the principle of administrative feasibility of taxation as it would unduly burden electric cooperatives which operate on a non-profit basis, such argument is best left to the wisdom of Congress. Indeed, the power to tax is plenary and unlimited in its range, acknowledging in its very nature no limits, so **that the principal check against its abuse is to be found only in the responsibility of the legislature** (which imposes the tax) to its constituency who are to pay it.[9]

In sum, the Court finds no merit in the arguments raised by petitioner.

Respondents' Motion for Reconsideration

The Court is under no obligation to deal individually and specifically with the grounds relied upon by respondents; to do so would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the assailed Decision.[10]

Nonetheless, for the benefit of the parties, the Court echoes its ruling that it has jurisdiction over the consolidated cases. The Court's "other matters" jurisdiction under Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, includes the power to review the issuance of a warrant of distraint and/or levy.[11] The ROs who conducted the audit of petitioner for TY 2013 are not named in the Letter of Authority issued for the purpose, thereby invalidating the assessment flowing from such audit.[12] Finally, for both TYs 2012 and 2013, respondents failed to consider petitioner's arguments embodied in the Replies to the Preliminary Assessment Notices, and the Protests to the Formal

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[8] *See* Revenue Memorandum Circular No. 76-2003.

[9] *Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Alberto Romulo*, et al., G.R. No. 160756, March 9, 2010.

[10] *Social Justice Society (SJS) Officers, et al. vs. Alfredo S. Lim, in his capacity as Mayor of the City of Manila*, G.R. Nos. 187836 & 187916, March 10, 2015.

[11] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[12] *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.

Letters of Demand, in violation of petitioner's due process rights.[13] In all, these circumstances invariably show that the assessments issued against petitioner are void.

Since both petitioner and respondents raise no new or substantial arguments that would warrant the reconsiderations sought, the Court finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, in light of the foregoing, the parties' respective Motions for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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

[13] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.