REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BUKIDNON II ELECTRIC COOPERATIVE, INC. (BUSECO),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10822

Members:

RINGPIS-LIBAN, UY, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

MAR 2 5 2025

2:18 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

THE CASE

Before this Court is a *Petition for Review* which prays that the Court: (1) nullify and cancel the *Formal Letter of Demand* (FLD) and *Final Assessment Notice* (FAN) dated December 3, 2021 issued by Revenue Region No. 16, Cagayan de Oro City; and (2) cancel the income tax assessment for taxable year 2018 amounting to ₱23,509,690.98.[1]

THE PARTIES

Petitioner Bukidnon II Electric Cooperative, Inc. (BUSECO) is a non-stock non-profit electric cooperative, with principal office at Manolo Fortich, Bukidnon. It was issued a Certificate of Franchise by the National Electrification Administration (NEA), pursuant to Presidential Decree (PD) No. 269. It was formed and organized for the purpose of supplying, promoting and encouraging

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[1] Prayer, *Petition for Review*, Docket, p. 13.

the fullest use of electric service within its franchise area in the province of Bukidnon based on the lowest cost with sound economy. It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 000-620-433.[2]

Respondent Commissioner of Internal Revenue is empowered, among others, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, and other matters arising from the implementation of the National Internal Revenue Code and other laws administered by the BIR. Its office address is at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On November 22, 2019, petitioner received the *Letter of Authority* (LOA) dated November 13, 2019 with No. 099-2019-00000180/SN eLA201200017511,[4] signed by Regional Director Nuzar N. Balatero with *Checklist of Documentary Requirements*,[5] wherein Revenue Officer Katrina Johanna Cailing and Group Supervisor Geraldine Jadap, were authorized to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2018.

Thereafter, on November 17, 2021, petitioner received the *Preliminary Assessment Notice* (PAN) dated October 28, 2021, with *Details of Computation and Details of Discrepancy*,[6] issued by Regional Director, CESO V of Revenue Region No. 16, Cagayan de Oro City, Ms. Esmeralda M. Tabule, wherein the BIR assessed petitioner with the deficiency income tax, including interest, in the total amount of ₱23,280,852.89, for taxable year 2018. In response, petitioner filed a *Protest with Request for Reconsideration* dated November 24, 2021[7] addressed to the said Regional Director, on December 2, 2021.

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[2] Par. 1, The Parties, *Petition for Review* (Docket, p. 5) vis-à-vis par. 1, Proposed Stipulation of Facts, *Pre Trial Brief for the Petitioner* (Docket, pp. 135 to 139). *Cf.* Minutes of the hearing held on October 17, 2023, Docket, p. 175.

[3] Par. 2, The Parties, *Petition for Review* (Docket, p. 5) vis-à-vis par. 1, *Answer* (Docket, p. 93).

[4] Annex "P-4", *Petition for Review* (Docket, p. 33); par. IV and Proposed Markings of the Exhibits, *Pre Trial Brief for the Petitioner* (Docket, p. 136); Refer also to the BIR Records, Folder III (p. 534); and par. IV, Documents to be Presented, *Respondent's Pre-Trial Brief* (Docket, p. 142). *Cf.* Minutes of the hearing held on October 17, 2023, Docket, p. 175.

[5] Annex "P-5", *Petition for Review* (Docket, p. 35); par. IV and Proposed Markings of the Exhibits, *Pre Trial Brief for the Petitioner* (Docket, p. 137); Refer also to the BIR Records, Folder III (p. 533); and par. IV, Documents to be Presented, *Respondent's Pre-Trial Brief* (Docket, p. 142). *Cf.* Minutes of the hearing held on October 17, 2023, Docket, p. 175.

[6] Annex "P-9", *Petition for Review* (Docket, pp. 56 to 62); par. IV and Proposed Markings of the Exhibits, *Pre Trial Brief for the Petitioner* (Docket, p. 137); Refer also to the BIR Records, Folder IV (pp. 790 to 797); and par. IV, Documents to be Presented, *Respondent's Pre-Trial Brief* (Docket, p. 143). *Cf.* Minutes of the hearing held on October 17, 2023, Docket, p. 175.

[7] Annex "P-10", *Petition for Review* (Docket, pp. 63 to 68); par. IV, Proposed Markings of the Exhibits, *Pre Trial Brief for the Petitioner* (Docket, p. 137); Refer also to the BIR Records, Folder IV (pp. 825 to 833); and par. IV, Documents to be Presented, *Respondent's Pre-Trial Brief* (Docket, p. 143). *Cf.* Minutes of the hearing held on October 17, 2023, Docket, p. 175.

On December 21, 2021, petitioner received the FAN dated December 3, 2021 and FLD dated December 6, 2021, with *Details of Computation and Details of Discrepancy* issued by the same Regional Director,[8] demanding payment of income tax, including interest, in total amount of ₱23,509,690.98, for taxable year 2018.

On December 28, 2021, petitioner filed the *Protest Letter with Request for Reconsideration* dated December 27, 2021[9] addressed to said Regional Director Esmeralda M. Tabule.

In reply, on March 4, 2022, petitioner received the letter dated January 18, 2022, signed by Regional Director of Revenue Regional No, 16, Cagayan de Oro City, Emir U. Abutazil,[10] stating, among others, that *"request for reconsideration on the ground that BUSECO being an electric cooperative is permanently exempt to Income Tax is denied. We reiterate the validity of FIRB Resolution No. 24-87 which expressly provides that 'income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable'."*

PROCEEDINGS BEFORE THIS COURT

On March 31, 2022, petitioner filed the present *Petition for Review.*[11]

On May 25, 2022, respondent filed a *Motion to Admit Attached Answer*,[12] which was granted by the Court in the Resolution dated March 17, 2023,[13] thereby admitting the attached *Answer*,[14] where respondent interposed the following special and affirmative defenses, to wit: (1) petitioner is not exempt form payment of income taxes and liable for deficiency income tax for taxable year 2018; (2) the deficiency income tax assessment in the FLD/FAN dated December 6, 2021 is correct; (3) all presumptions are in favor of the correctness of tax assessments; (4) tax exemptions should be granted only by clear and unequivocal provisions of law on the basis of language too plain to be mistaken

[8] Annex "P-11", *Petition for Review* (Docket, pp. 69 to 76); and par. IV, Proposed Markings of the Exhibits, *Pre Trial Brief for the Petitioner* (Docket, p. 137). *Cf.* Minutes of the hearing held on October 17, 2023, Docket, p. 175.

[9] Annex "P-12", *Petition for Review* (Docket, pp. 77 to 81); and par. IV, Proposed Markings of the Exhibits, *Pre Trial Brief for the Petitioner* (Docket, p. 137). *Cf.* Minutes of the hearing held on October 17, 2023, Docket, p. 175.

[10] Annex "P-13", *Petition for Review* (Docket, pp. 82 to 83); par. IV, Proposed Markings of the Exhibits, *Pre Trial Brief for the Petitioner* (Docket, p. 137); Refer also to the BIR Records, Folder IV (pp. 850 to 853); and par. IV, Documents to be Presented, *Respondent's Pre-Trial Brief* (Docket, p. 143). *Cf.* Minutes of the hearing held on October 17, 2023, Docket, p. 175.

[11] Docket, pp. 5 to 15.

[12] Docket, pp. 87 to 91. Petitioner did not file its comment, per the Records Verification Report dated March 1, 2023 issued by this Courts Judicial Records Division, Docket, p. 115.

[13] Docket, pp. 117 to 118.

[14] Docket, pp. 93 to 104.

and statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; (5) there is no question that an electric cooperative established under PD No. 269 is entitled to exemption privileges subject to the conditions stated in the Fiscal Incentives Regulatory Board (FIRB) Resolution No. 24-87; and (6) petitioner's income from its electric operations is subject to income taxes as its tax exemption had already ended.

In the Resolution dated April 13, 2023,[15] the Court suspended the proceedings, and referred the case for mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) pursuant to Section II of the Interim Guidelines for Implementing Mediation in this Court.

On May 5, 2023, respondent submitted the *BIR Records* for this case,[16] consisting of four (4) folders, with 357 pages (consecutively numbered from page 1 to 357), 158 pages (page 358 to 517), 123 pages (page 518 to 641), and 220 pages (page 642 to 862), respectively.

Subsequently, on June 7, 2023, the PMC-CTA submitted a *Back to Court*,[17] stating that mediation was refused by petitioner. In the Resolution dated July 13, 2023,[18] the Court noted the submission of *Back to Court*, and reinstated the proceedings in the present case.

The Pre-Trial Conference was set and held on October 17, 2023.[19] Prior thereto, *Pre Trial for the Petitioner* and *Respondent's Pre-Trial Brief* were filed on October 10, 2023[20] and October 13, 2023,[21] respectively.

During the Pre-trial, the parties admitted the stipulated facts and issues as well as the documents in their respective Pre-Trial Briefs.[22] Considering that this case involves a legal issue, and that the parties have agreed on the stipulations in their respective *Pre-Trial Briefs*, the Pre-Trial was deemed terminated.[23] The parties were given thirty (30) days to file their respective memoranda.[24]

Respondent filed his *Memorandum* on November 20, 2023,[25] while *Memorandum for the Petitioner* was filed via accredited courier on January 10, 2024.[26]

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[15] Docket, pp. 120 to 121.
[16] *Compliance* dated May 5, 2023, Docket, pp. 122 to 124.
[17] Docket, p. 127.
[18] Docket, pp. 131 to 132.
[19] Notice of Pre-Trial Conference dated July 14, 2023, Docket, pp. 133 to 134; and Minutes of the hearing held on October 17, 2023, Docket, p. 175.
[20] Docket, pp. 135 to 138.
[21] Docket, pp. 141 to 145.
[22] Minutes of the hearing held on October 17, 2023, Docket, p. 175.
[23] *Id.*
[24] *Id.*
[25] Docket, pp. 176 to 189.
[26] Docket, pp. 199 to 208.

This case was deemed submitted for decision on April 19, 2024.[27]

THE STIPULATED ISSUE

During the Pre-trial, the parties agreed to the following issue for this Court's resolution, *viz.*:

> "Whether or not petitioner is liable to pay the deficiency income tax." [28]

Petitioner's arguments:

Petitioner essentially claims that it is permanently exempted from paying income tax, pursuant to Section 39 (a)(1) of PD No. 269, Revenue Memorandum Circular (RMC) No. 72-2003, and CTA Case No. 10145.

Respondents' counter-arguments:

Respondent contends that petitioner is not exempt form payment of income taxes and liable for deficiency income tax for taxable year 2018; that the deficiency income tax assessment in the FLD/FAN dated December 6, 2021 is correct; that all presumptions are in favor of the correctness of tax assessments; that tax exemptions should be granted only by clear and unequivocal provisions of law on the basis of language too plain to be mistaken and statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; that there is no question that an electric cooperative established under PD No. 269 is entitled to exemption privileges subject to the conditions stated in the FIRB Resolution No. 24-87; and that petitioner's income from its electric operations is subject to income taxes as its tax exemption had already ended.

THE COURT'S RULING

The *Petition for Review* is dismissed.

This Court shall first determine whether it has jurisdiction to entertain the present appeal.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority

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[27] Docket, p. 212.
[28] Minutes of the hearing held on October 17, 2023, Docket, p. 175.

to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, *when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.*[29]

To be sure, the matter of jurisdiction may be ruled upon regardless of the stage of the proceedings, considering that a judgment rendered without jurisdiction is null and void, and a void judgment cannot be the source of any right whatsoever.[30]

Section 7(a)(1) of Republic Act (RA) No. 1125[31], as amended by RA No. 9282[32], reads, in part, as follows:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphasis added)*

The word "decision" in the above quoted provision has been interpreted to mean the decisions of respondent on the protest of the taxpayer against the assessments.[33] In other words, appealable to this Court is a decision that refers not to the assessment itself, but to one made on the protest against such assessment.[34]

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[29] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

[30] Refer to *El Greco Ship Manning and Management Corporation vs. Commissioner of Customs*, G.R. No. 177188, December 4, 2008.

[31] AN ACT CREATING THE COURT OF TAX APPEALS.

[32] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[33] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010.

[34] *People of the Philippines vs. Sandiganbayan (Fourth Division), et al.*, G.R. No. 152532, August 16, 2005.

Furthermore, Section 3.1.5 of Revenue Regulations (RR) No. 12-99,[35] as amended by RR Nos. 18-2013,[36] 7-2018,[37] and 22-2020,[38] provides as follows, to wit:

> "3.1.5 ***Final Decision on a Disputed Assessment (FDDA).*** — **The decision of the Commissioner or his duly authorized representative shall state** the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) **that the same is his** [or her] ***final decision.***" *(Emphases added)*

Relative thereto, it must be emphasized that it is jurisprudentially mandated that respondent should always indicate to the taxpayer in clear and categorical language what constitutes his or her final determination of the disputed assessment.[39]

In the present case, petitioner claims that its *Petition for Review* was timely filed, as it assails the reply letter dated January 18, 2022 issued by Regional Director Emir U. Abutazil, and received on March 4, 2022,[40] which it claimed was respondent's denial letter of its protest.[41] For easy reference, said letter reads:

> "This pertains to your letter dated December 27, 2021 requesting for a reconsideration on the result of the investigation of the **2018** All Internal Revenue Tax Liabilities covered under Formal Letter of Demand/Final Assessment Notice No. RR16-099-228-2021 dated December 3, 2021 pursuant to **Letter of Authority (LOA) No. 099-2019-00000180/(eLA201200017511)** dated November 13, 2019.
>
> Please be informed that your request for reconsideration on the ground that BUSECO being an electric cooperative is permanently exempt to Income

[35] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1996.

[36] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Delinquency Tax Assessment.

[37] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Delinquency Tax Assessment.

[38] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-2013 and Revenue Regulations No. 7-2018 Relative to the Due Process Requirement in the Issuance of a Delinquency Tax Assessment.

[39] Refer to *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005.

[40] Annex "P-13", *Petition for Review* (Docket, pp. 82 to 83); par. IV, Proposed Markings of the Exhibits, *Pre Trial Brief for the Petitioner* (Docket, p. 137); Refer also to the BIR Records, Folder IV (pp. 850 to 853); and par. IV, Documents to be Presented, *Respondent's Pre-Trial Brief* (Docket, p. 143). *Cf.* Minutes of the hearing held on October 17, 2023, Docket, p. 175.

[41] Refer to first par. and pars. 13 and 14, *Petition for Review*, Docket, pp. 5 and 7.

> Tax is **denied**. We reiterate the validity of FIRB Resolution No. 24-87 which expressly provides that '**income form 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**.'
>
> xxx xxx xxx
>
> Moreover, as to the Court of Tax Appeals decisions cited, please be informed that the Doctrine of Stare Decisis applies only to rulings of the Supreme Court and not the judgment of the lower courts or tribunals. The Bureau of Internal revenue is generally not bound to apply the ruling of the Court of Tax Appeals in one particular case to a similar case unless such ruling bears the imprimatur of the Supreme Court. *(BIR Ruling No. 1266-18, October 19, 2018)*
>
> Please give this matter your utmost attention."

However, the foregoing letter would show that the same *cannot* be considered as a "decision" on the protest of the taxpayer against the subject tax assessment or an FDDA. This must be so because nowhere does it state in clear and unequivocal language that such letter already constitutes respondent's final decision of the disputed assessment, as required under the Section 3.1.5 of RR No. 12-99, as amended. Thus, petitioner *erred* in appealing the letter as respondent's decision to this Court.

Consequently, since petitioner erred in construing the reply letter dated January 18, 2022 issued by Regional Director Emir U. Abutazil as a final decision of respondent on its protest, this Court has no recourse but to *dismiss* the case outright for lack of jurisdiction.

WHEREFORE, premises considered, the *Petition for Review* is **DISMISSED** on jurisdictional grounds.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
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