Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

AGUSAN DEL NORTE ELECTRIC COOPERATIVE, INC., Petitioner,	**CTA Case No. 9376** For: Assessment
-versus-	Members: **DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE and REGIONAL DIRECTOR NASSER A. TANGCOR, in his capacity as OIC Regional Director of REGIONAL BUREAU OF INTERNAL REVENUE (REVENUE REGION NO. 17, BUTUAN CITY), Respondents.	Promulgated: AUG 05 2019 ; 2:07 pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on September 17, 2018, is a Petition for Review filed by petitioner Agusan Del Norte Electric Cooperative, Inc. (ANECO) against respondents Commissioner of Internal Revenue (CIR) and Regional Director Nasser A. Tangcor, in his capacity as OIC Regional Director of Regional Bureau of Internal Revenue (BIR)-Revenue Region (RR) No. 17, Butuan City, on June 28, 2016, praying for the cancellation of the alleged deficiency Income Tax, Value-Added Tax (VAT) and Expanded Withholding Tax on rent expense assessments for the calendar year 2012 (CY 2012) in the total amount of ₱11,531,816.95, inclusive of interests, surcharges and compromise penalties[1].

THE PARTIES

Petitioner Agusan Del Norte Electric Cooperative, Inc. is a non-stock, non-profit electric cooperative duly organized, registered and existing in accordance with the provisions of Presidential Decree No. 269 (The National Electrification Administration Decree), with its principal office address located at J.C. Aquino Avenue, Butuan City[2].

Petitioner ANECO is a holder of a Certificate of Franchise to operate an electric light and power service, as a distribution facility, in Butuan City and the Municipalities of Agusan del Norte until December 12, 2054, issued by the National Electrification Commission on July 29, 2005 (a renewal of its original Certificate of Franchise issued on December 12, 1979), and is a registered taxpayer of the BIR- RR No. 17, Revenue District Office (RDO) No. 103, Butuan City with Tax Identification Number (TIN) 000-905-276-0000[3].

On the other hand, respondents Commissioner of Internal Revenue and Regional Director Nasser A. Tangcor (BIR- RR No. 17, Butuan City) are vested under the appropriate or pertinent laws with the authority to carry out the functions, powers, duties and responsibilities of their office, including, among others, the power to decide disputed assessments, and cancel and abate tax liabilities pursuant to and in accordance with the provisions and rules and regulations of the National Internal Revenue Code and other applicable laws.

Respondents may respectively be served with summons, pleadings and copies of orders and other processes of this Court in connection with the instant petition at their respective offices at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City (for the Commissioner of Internal Revenue), and at the BIR- RR No. 17, Governor Jose Rosales Avenue, Butuan City (for Regional Director Nasser A. Tangcor)[4].

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[1] I. Statement of the Case, Pre-Trial Order, Docket vol. I, p.501
[2] Paragraph (Par.) 1, Petition for Review, Docket vo. I. p.12
[3] *Ibid.*, p. 12-13
[4] A. Summary of Admitted Facts, Pre-Trial Order, Docket vol. I, pp. 502-503

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THE FACTS

Petitioner ANECO received on November 11, 2015 a copy of the Preliminary Assessment Notice (PAN)[5] dated November 4, 2015 with Details of Discrepancies[6] issued by the BIR- RR No. 17 signed by respondent OIC Regional Director Nasser A. Tangcor.

On November 19, 2015, petitioner filed with the BIR its reply[7] to the PAN dated November 18, 2015.

Petitioner ANECO received on February 29, 2016 the Formal Letter of Demand (FLD)[8] with Details of Discrepancies and Audit Results/Assessment Notice appended thereto dated February 17, 2016.

On March 14, 2016, petitioner filed its protest[9] to the FLD requesting for reconsideration/reinvestigation of the assessment.

In a letter[10] dated March 18, 2016 signed by respondent Tangcor and received by petitioner on March 22, 2016, it was conveyed to petitioner that based on the legal opinion of the Legal Division of the BIR, the request for reinvestigation is not given due course.

The above letter prompted petitioner to file a Protest (Request for Reconsideration)[11] before the CIR on April 21, 2016.

On May 10, 2016, petitioner received a copy of a 1st Indorsement[12] dated May 5, 2016, addressed to the Revenue District Officer of RDO No. 103 issued by the BIR- RR No. 17.

On May 30, 2016, petitioner received a copy of the Final Decision on Disputed Assessment (FDDA)[13] signed by respondent Tangcor.

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[5] Exhibit "P-3", Docket vol. II, pp.640-641
[6] Exhibit "P-4", Id., p.642
[7] Exhibit "P-5", Id., p.643
[8] Exhibit "R-12", BIR Records, pp.538-540
[9] Exhibit "P-33", Docket vol. II, p.711
[10] Exhibit "P-2", Id., p.639
[11] Exhibit "P-1", Id., pp.632-638
[12] Exhibit "P-46", Id., p.737
[13] Exhibit "P-47", Id., pp.738-739

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Consequently, petitioner filed this instant Petition for Review on June 28, 2016.

Respondent CIR and OIC- Regional Director Nasser A. Tangcor separately filed their Answers on October 5, 2016[14] and August 22, 2016[15], respectively, interposing the following affirmative defenses:

Respondent CIR

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> ***WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION.***
>
> **A. THE PRESENT PETITION IS DISMISSIBLE FOR FAILURE TO COMPLY WITH CONDITION PRECEDENT.**
>
> 5. A taxpayer's right to contest assessments, particularly the right to appeal to the Court of Tax Appeals (CTA), is a statutory privilege that may be exercised only in the manner and in accordance with the provisions of law.
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> 6. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For this reason, the courts construe these provisions of statutes as mandatory. Hence, the Honorable Supreme Court held:
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> **"The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.** Thus, one who seeks to avail of the right to appeal must comply with the requirements of

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[14] Docket vol. I, pp.232-246
[15] Docket vol. I, pp.156-162

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the Rules. **Failure to do so often leads to the loss of the right to appeal."**

7. It is respectfully submitted that the petition for review is dismissible for failure to comply with condition precedent.

8. Section 1, Rule 16 of the 1997 Rules of Civil Procedure provides as follows:

"Section 1. Grounds- Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

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(j) That a condition precedent for filing the claim has not been complied with." (Emphasis supplied)

9. A perusal of the BIR records show that the Formal Letter of Demand dated <u>17 February 2016</u> of the Regional Director of Revenue Region 17- Butuan City was served to petitioner on the same date. While petitioner timely filed its protest against the Formal Letter of Demand on <u>14 March 2016,</u> however, petitioner **prematurely** filed another protest (Request for Reconsideration) dated 20 April 2016, with the Office of the Commissioner of Internal Revenue without even waiting for the decision of the Regional Director of Revenue Region 17- Butuan City on its protest to the Formal Letter of Demand.

10. Otherwise stated, instead of waiting for the decision of Regional Director of Revenue Region 17- Butuan City on the protest to the Formal Letter of Demand, petitioner filed a protest (Request for Reconsideration) dated April 20, 2016 in the **absence** of the decision of the Regional Director of Revenue Region 17.

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11. Note that the Final Decision on Disputed Assessment dated 26 May 2016 which is the decision of the Regional Director of the Revenue Region No. 17-Butuan City was issued only on 26 May 2016, or less than a month after filing of the protest with the CIR.

12. Clearly, petitioner did not comply with the revenue Regulations No. 18-2013 (RR 18-2013), pertinent portion of which states:

> 3.1.4 Disputed Assessment.- The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows: xxx
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> **If the protest is denied**, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.

13. As here, since petitioner's protest (Request for Reconsideration) dated 20 April 2016 filed with the Commissioner of Internal Revenue was prematurely filed before the issuance of the Final Decision on Disputed Assessment of Regional Director of Revenue Region No. 17, clearly, petitioner failed to comply with condition precedent in violation of RR 18-2013. Thus, petitioner had no statutory right to file the instant petition.

B. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES

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14. The doctrine of exhaustion of administrative remedies is expounded by the Supreme Court in *ADDITION HILLS MANDALUYONG CIVIC & SOCIAL ORGANIZATION, INC. vs. MEGAWORLD PROPERTIES & HOLDINGS INC., G.R. No. 175039, April 18, 2012,* to wit:

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15. In the same manner, respondent submits that the exceptions to the doctrine as provided above do not exist in the present case. Therefore, petitioner should have complied with the doctrine of exhaustion of administrative remedies as provided by law.

16. Instead of waiting for the decision of the Regional Director of Revenue Region No. 17 on its protest to the formal Letter of Demand, petitioner unjustifiably disregarded the doctrine of exhaustion of administrative remedies by filing another protest (Request for Reconsideration) dated April 20, 2016 with the Commissioner of Internal Revenue.

17. The case of *BELEN C. FIGUERRES vs. COURT OF APPEALS, CITY OF ASSESSORS OF MANDALUYONG CITY TREASURER OF MANDALUYONG, and SANGGUNIANG BAYAN OF MANDALUYONG, G.R. No. 119172, March 25, 1999,* explains the effect of non-exhaustion of administrative remedies:

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18. Now, to emphasize that the **dismissal** of the case is proper for failure to exhaust administrative remedies, in *COMMISSIONER OF INTERNAL REVENUE v. COURT OF TAX APPEALS and PETRON CORPORATION,* it was held:

> "Verily, the fact that there is no decision by the COC to appeal from highlights Petron's failure to exhaust administrative remedies prescribed by law. Before a party is allowed to seek the

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> intervention of the courts, it is a pre-condition that he avail of all administrative processes afforded to him, such that if a remedy within the administrative machinery can be restored to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought, otherwise, the premature resort to the court is fatal to one's cause of action. While there are exceptions to the principle of exhaustion of administrative remedies, it has not been sufficiently shown that the present case falls under any of the exceptions." (Emphasis supplied)

19. From the foregoing, respondent respectfully submits that the instant petition warrants the dismissal of case. Thus, the Honorable Court has no jurisdiction over the instant case.

RESPONDENT'S ASSESSMENT HAS BASES IN FACTS AND LAW.

A. PETITIONER IS LIABLE FOR THE ASSESSED DEFICIENCY TAXES.

20. Petitioner's reliance on Presidential Decree No. 269 (PD 269) that Electric Cooperatives registered with the National Electrification Administration (NEA) are exempt from income tax is manifestly misplaced.

21. Under PD 269, petitioner has been granted tax exemption provided it shall operate in conformity with the provisions thereof, the exemption is for 30 years or when the cooperative is completely free from indebtedness incurred by borrowing whichever event first occurs. However, it can never claim perpetual tax exemption under PD 269.

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22. The provisions of PD 269 has been effectively repealed by subsequent laws, viz:

> Presidential Decree No. 1955 withdrew tax exemptions of PD 269:
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> "SECTION 1. The provisions of any special or general law to the contrary notwithstanding, all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts and other charges heretofore granted to private business enterprises and/or persons engaged in any economic activity are hereby withdrawn xxx"
>
> On January 8, 1986, then Pres. Marcos issued PD No. 2008, requiring the Minister of Finance to immediately restore the tax exemption of all electric cooperatives. However, in December 1986, then Pres. Corazon C. Aquino issued Executive Order (EO) No. 93 which withdrew all tax and duty exemptions granted to private entities effective March 10, 1987. But Memorandum Order No. 65, dated January 23, 1987, suspended the implementation of the said EO until June 30, 1987 for cooperatives. Effective July 1, 1987, FIRB No. 24-87 restored the tax and duty exemption privileges of electric cooperatives under PD No. 269. FIRB Resolution No. 24-87 reads:
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> > BE IT RESOLVED, as it hereby resolved, That the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 (creating the National Electrification Administration as a corporation, prescribing its powers and activities, appropriating the necessary funds therefore and declaring a national policy objective for the total electrification of the Philippines on an area coverage basis; the organization, promotion and development of electric cooperatives to

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> attain the said objective, prescribing terms and conditions for their operations, the repeal of Republic Act No. 6038, and for other purposes), as amended, are restored effective July 1, 1987: Provided, however, That income from their electric service operations and other sources including the interest income from bank deposits and yield or any other similar arrangements shall remain taxable: Provided, further, That the electric cooperatives shall furnish the FIRB on an annual basis or as often as the FIRB may require them to do so, statistical and financial statements of their operations and other information as may be required, for purposes of effective and efficient tax and duty exemption availment.
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> xxx xxx xxx

24. True as it may that FIRB 24-87 restores tax and duty exemption privileges of electric cooperatives, however, it is crystal clear 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 <u>remain taxable</u>**.

25. It is said that taxes are essential to government's very existence hence, the dictum that "taxes are the lifeblood of the government." And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for tax exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

26. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority.

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27. An exemption from the common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

28. Further, as regards the assessed Value-added Tax deficiency, it was disclosed that petitioner, not being registered with the Cooperative Development Authority (CDA) is indeed liable on its gross receipts in accordance with Section 106 of the Tax Code.

B. PETITIONER WAS ACCORDINGLY INFORMED OF THE FACTS AND LAW ON WHICH THE ASSESSMENT WAS MADE.

29. Respondent informed petitioner of the facts and law on which the assessment was made. In fact, the Details of Discrepancies of the Formal Letter of Demand states:

1. Income Tax Deficiency
   Verification of the records disclosed that there were no adjustments on the gross receipts, purchases, operating expenses and net income per return, thus minimum corporate income tax was applied as it did yield higher taxes compared to normal corporate income tax. Income tax deficiency was computed pursuant to Sections 27(E)(1), 248 & 249 of the NIRC, as amended. Also, there was a failure to file quarterly income tax returns thus penalized.

2. Value Added Tax Deficiency
   It was disclosed per audit that final VAT withheld on the generation and transmission charges claimed by the taxpayer as tax credit in the amount of P1,093,566.82 was disallowed. The real and actual declarant and claimant of the aforementioned income and the withholding tax final VAT is the power supplier of the Generation and Transmission

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Company. The cooperative serves only as the collecting arm and the withholding taxes accruing thereon should be tendered to the power supplier. This resulted to the computation of value added tax deficiency pursuant to Sections 106, 248 and 249 of the NIRC, as amended.

3. Withholding Tax Deficiency
Verification of records disclosed that there was an underremittance of expanded withholding tax on rental expense amounting to P31,620.00, hence assessed per audit pursuant to Revenue Regulations No. 2-98, amended by Revenue Regulations No. 14-2002, Section 248 & 249 of the NIRC, as amended.

4. Compromise penalties were imposed pursuant to RMO No. 19-2007.

THE ASSESSMENT ISSUED AGAINST PETITIONER IS VALID AND LAWFUL.

30. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise, the presumption of correctness of tax assessment stands. *(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R. No. 136975, March 31, 2005)*

31. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of tax Appeals, 164 SCRA 524).* Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

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Respondent OIC Regional Director Nasser A. Tangcor

FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

4. That the herein Petitioner had filed a Protest which was dated April 20, 2016(Annex "A") before the Office of the Commissioner of Internal Revenue last April 22, 2016 as evidenced herewith attached LBC Delivery Receipt showing that the said protest was delivered last April 22, 2016 (Annex "B");

5. That from April 22, 2016 to June 28, 2016, it is exactly 67 days;

6. That Section 228 of the National Internal Revenue Code (Annex "C") states, to wit:

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> *If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.*

7. That the Petition for Review filed by the Petitioner ANECO is prematurely filed before this Honorable Court since it is clear that the herein respondent BIR is given 180 days from the submission of all relevant documents to decide the protest pursuant to the aforementioned underlined provision of the National Internal Revenue Code;

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8. That there is no decision rendered by the Office of the Commissioner on the protest, hence, the assessment is not yet final and executory on the administrative level;

9. That since there is not final and executory assessment, the filing of the instant Petition for Review is prematurely filed before this Honorable Court;

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11. That Petitioner ANECO's banking on Section 39 of PD No. 269 (Annex "E") as a tax shield is misplace since the said provision had been repealed/modified by the following laws, to wit:

a) Presidential Decree (PD) No. 1955 (Annex "F') which withdrew the tax exemption of PD No. 269

b) PD No. 2008 (Annex "G") which restores the tax exemption of electric cooperatives;

c) Executive Order No. 93(Annex "H") which again withdrew the aforementioned tax privileges however EO 93 was suspended by a memorandum;

d) Fiscal Incentives Regulatory Board (FIRB) No. 24-87 (Annex "I") restored the tax exemption of electric cooperatives under the following provisions, to wit:

BE IT RESOLVED, as it hereby resolved, That the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 (creating the National Electrification Administration as a corporation, prescribing its powers and activities, appropriating the necessary funds therefore and declaring a national policy objective for the total electrification of the Philippines on an area

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> coverage 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), as amended, are restored effective July 1, 1987: Provided, however, That income from their electric service operations and other sources including the interest income from bank deposits and yield or any other similar arrangements shall remain taxable: xxx

12. That BIR ruling number 398-2013 (Annex "J") subjects the electric cooperative to taxes on their income on electric service operations pursuant to FIRB No. 24-87, hence, Petitioner ANECO, being an electric cooperative, is taxable on their income;

13. That in the case Of "DAVAO ORIENTAL ELECTRIC COOPERATIVE, INC., ***Petitioner, v.*** THE PROVINCE OF DAVAO ORIENTAL, ***Respondent.*** (G.R. No. 170901 : January 20, 2009) "(Annex "K"), the Supreme Court recognizes the validity of FIRB No. 24-87 quoting, "First, we resolve the issue of retroactivity of FIRB No. 24-87. We affirm the ruling of the CA. Indeed, even a cursory reading of the resolution, quoted above, bares no indicia of retroactivity of its application. FIRB No. 24-87 is crystal clear in stating that the "tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269...are restored effective July 1, 1987" there is no way to construe it. The language of the law is clear and unambiguous. When the language of the law is clear and unequivocal, the law must be taken to mean what it says;

14. That in as much as FIRB No. 24-87 is valid and 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 benefits from bank deposits and yield or any other similar arrangements shall remain taxable", thus restoring the tax and duty exemption privileges of electric cooperatives under PD No. 269(Section 39) subject, however, to the

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terms and conditions of FIRB No. 24-87, it is the view of the undersigned that Petitioner ANECO's income is subject to Income Tax;

15. That Petitioner ANECO, not being registered with the Cooperative Development Authority (CDA), is liable to VAT on their gross receipts pursuant to Section 106 of the National Internal Revenue Code (Annex "L");

16. That the compromise penalties is imposed pursuant to Revenue Memorandum Order No. 19-2007 (Annex "M").

17. That, in view of the foregoing, the undersigned prays for the dismissal of the Petition and further prays for other relief that maybe justifiable under the circumstances.

A Notice of Pre-Trial Conference[16] was issued by the Court on August 30, 2016 setting the case for Pre-Trial on November 24, 2016. However, upon motion of respondents, the Pre-Trial was moved to February 9, 2017[17]. Accordingly, petitioner's Pre-Trial Brief[18] was filed on November 28, 2016, while respondent CIR's Pre-Trial Brief[19] was filed on February 2, 2017.

Pre-trial conference ensued. The parties submitted their Joint Stipulation of Facts and Issues[20] on March 21, 2017. Thereafter, the Court issued a Pre-Trial Order[21] on April 18, 2017 approving and adopting the joint stipulations filed by the parties and the pre-trial was deemed terminated.

During trial, petitioner presented as witnesses Mr. Horacio T. Santos and Mr. Rodolfo L. Ranoco, its former General Manager and Finance Department Manager, respectively.

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[16] Notice of Pre-Trial Conference, Docket vol. I, pp.208-210
[17] Order dated November 21, 2016, Docket vol. I, p.376
[18] Docket vol. I, pp.260-264
[19] Docket vol. I, pp.389-393
[20] Docket vol. I., pp.476-482
[21] Docket vol. I, pp.501-511

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Petitioner filed its Formal Offer of Evidence[22] on October 18, 2017. In a Resolution[23] dated January 12, 2018, the Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-48-A", "P-49", "P-49-A", "P-49-B", "P-49-B-1", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59" and "P-60", while the admission of Exhibits "P-28", "P-29" and "P-30" was denied.

The admitted documentary exhibits offered by the petitioner are the following:

Exhibit:	Description:
P-1	Protest (Request for Reconsideration) dated April 20, 2016
P-2	BIR Letter dated March 18, 2016
P-3	Preliminary Assessment Notice dated November 4, 2015
P-4	Details of Discrepancies Calendar Year 2012
P-5	Letter of General Manager Horacio T. Santos of petitioner ANECO, dated November 18, 2015
P-6	Letter (dated 03-14-2006) of BIR Asst. Commissioner (Legal Service) James H. Roldan addressed to Mr. Roberto S. Bucoy, OIC-Revenue District Officer, RDO No. 91, Dipolog City
P-7	Decision CIR vs. Samar Electric/Samar Electric vs. CIR (March 11, 2010) (C.T.A. EB No. 460 and C.T.A. EB No. 462)
P-8	SC Decision Samar Electric Cooperative vs. Commissioner of Internal Revenue (December 10, 2014)
P-9	Form No. 1702Q 1st Quarter CY 2012
P-10	Form No. 1702Q 2nd Quarter CY 2012
P-11	Form No. 1702Q 3rd Quarter CY 2012
P-12	Annual Income Tax Return Page 1 CY 2012
P-13	Annual Income Tax Return Page 2 CY 2012
P-14	Annual Income Tax Return Page 3 CY 2012
P-15	Annual Income Tax Return Page 4 CY 2012
P-16	Annual Income Tax Return Page 5 CY 2012
P-17	Form 2306 for January 2012
P-18	Form 2306 for February 2012
P-19	Form 2306 for March 2012
P-20	Form 2306 for April 2012
P-21	Form 2306 for May 2012

[22] Docket vol. II, pp.622-631
[23] Docket vol. II, pp.1032-1033

P-22	Form 2306 for June 2012
P-23	Form 2306 for undated
P-24	Form 2306 for August 2012
P-25	Form 2306 for September 2012
P-26	Form 2306 for October 2012
P-27	Form 2306 for November 2012
P-31	Audit Results/Assessment Notice (VAT) Dated February 17, 2016
P-32	Audit Results/Assessment Notice (Compromise Penalty) dated February 17, 2016
P-33	Letter dated March 14, 2016 of ANECO General Manager Horacio T. Santos
P-34	NEA Legal Advisory No. 18 dated August 20, 2014
P-35	NEA Legal Advisory No. 03 dated July 20, 2004
P-36	BIR Letter dated May 22, 2006 signed by Regional Director Tamanatao S. Amerol
P-37	Letter dated January 18, 2006 signed by Horacio T. Santos
P-38	Audit Results/Assessment Notice Withholding Tax (Expanded) dated February 17, 2016
P-39	Payment Form 0605 4th Quarter 2012
P-40	BIR Email Notification (eFiling of Tax Return) dated March 11, 2016
P-41	eFPS Payment Form Transaction Date 3/11/2016
P-42	BIR eFPS payment confirmation Payment Transaction Date 3/11/2016
P-43	BIR Email Notification (ePayment) dated 3/11/2016
P-44	Confirmed Payment Advice dated March 11, 2016
P-45	Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code dated March 7, 2016
P-46	BIR 1st Indorsement dated May 5, 2016
P-47	BIR Final Decision on Disputed Assessment date May 26, 2016
P-48	Judicial Affidavit of Horacio T. Santos
P-48-A	Signature of Horacio T. Santos on his Judicial Affidavit
P-49	Judicial Affidavit of Rodolfo L. Ranoco
P-49-A	Signature of Rodolfo L. Ranoco on his Judicial Affidavit
P-49-B	Value-Added Tax Computation, Taxable Year 2012 attached as Annex "A" to the Judicial Affidavit of Rodolfo L. Ranoco
P-49-B-1	Signature of Rodolfo L. Ranoco on the Value-Added Tax Computation
P-50	ANECO Billing Statement for the month of January 2012
P-51	ANECO Billing Statement for the month of February 2012

P-52	ANECO Billing Statement for the month of March 2012
P-53	ANECO Billing Statement for the month of April 2012
P-54	ANECO Billing Statement for the month of May 2012
P-55	ANECO Billing Statement for the month of June 2012
P-56	ANECO Billing Statement for the month of July 2012
P-57	ANECO Billing Statement for the month of August 2012
P-58	ANECO Billing Statement for the month of September 2012
P-59	ANECO Billing Statement for the month of October 2012
P-60	ANECO Billing Statement for the month of November 2012

On the other hand, respondents presented as witnesses Revenue Officers Efren M. Lima and Edna E. Makiling.

Respondents filed their Formal Offer of Evidence[24] on March 19, 2018. In a Resolution[25] dated May 29, 2018, the Court admitted all of respondents' exhibits namely "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-17", "R-18", "R-20", "R-20-a", "R-21", and "R-21-a".

The admitted documentary exhibits offered by the respondents are the following:

Exhibit:	Description:
R-1	Letter of Authority LOA-103-2014-00000071 dated 4 July 2014
R-2	Checklist of Documentary Requirements dated 7 July 2014
R-3	First Notice dated 14 August 2014
R-4	Letter Notice LN No.: 103-RLFTRS-12-00-00003
R-5	Memorandum Report dated 3 September 2015
R-6	1st Indorsement dated 3 September 2015
R-7	Letter dated 2 February 2016
R-8	2nd Indorsement dated 2 February 2016
R-9	Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 7 March 2016

[24] Docket vol. II, pp.1042-1050
[25] Id., pp.1069-1070

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R-10	BIR Records consisting of one (1) folder of documents with 796 pages
R-11	Preliminary Assessment Notice (PAN) dated 4 November 2015
R-12	Formal Letter of Demand (FLD) dated 17 February 2016
R-13	Audit Results/Assessment Notice (BIR Form No. 0401) dated 17 February 2016
R-14	Final Decision on Disputed Assessment dated 26 May 2016
R-15	1st Indorsement dated 25 November 2015
R-16	Memorandum dated 4 January 2016
R-17	Protest letter dated 14 March 2016
R-18	Protest (Request for Reconsideration) dated 20 April 2016
R-20	Judicial Affidavit of Revenue Officer Efren M. Lima
R-20-a	Signature of RO Efren M. Lima
R-21	Judicial Affidavit of Revenue Officer Edna E. Makiling
R-21-a	Signature of RO Edna E. Makiling

Petitioner filed its Memorandum[26] on August 28, 2018, whereas respondents' Memorandum[27] was filed on and July 2, 2018. In a Resolution[28] dated September 17, 2018, the Court submitted the case for decision

ISSUES[29]

1. Whether the Honorable Court has jurisdiction over the instant petition; and

2. Whether petitioner is liable to pay its assessed deficiency Income Tax, VAT and Compromise Penalties, for the taxable year 2012, plus surcharge, 20% deficiency and delinquency interest pursuant to Sections 248 and 249 of the NIRC of 1997 or whether petitioner has a just and valid cause of action as averred in its Petition for Review and therefore entitled to the reliefs prayed therein.

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[26] Id., pp.1092-1110
[27] Id., pp.1071-1034
[28] Id., p.1114
[29] B. Stipulation of the Issues, Pre-Trial Order, Docket vol. I, p.503

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DISCUSSION/RULING

Foremost, the Court shall determine whether it has jurisdiction over the case.

The Court has jurisdiction over the case

The issue on jurisdiction of the Court heavily hinged on the Protest (Motion for Reconsideration) filed with respondent CIR on April 21, 2016 allegedly without waiting for the decision of respondent OIC-Regional Director Tangcor where the Protest to the FLD was originally filed on March 14, 2016.

Respondents belabored on the argument that petitioner violated established rules and regulations when it filed a motion for reconsideration before the CIR prior to the issuance of the FDDA or the lapse of the 180-day period to decide. According to respondents, such act of petitioner is tantamount to a failure to comply with condition precedent which is a ground for dismissal of the action under the Rules of Civil Procedure.

We disagree.

The issue on the alleged failure of petitioner to comply with condition precedent for filing the instant petition must be correlated with the jurisdiction of this Court.

Section 3, Rule 3 of the Revised Rules of the CTA on jurisdiction of the Court in Division provides, to wit:

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> > (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 in relation thereto, or other matters arising under the National Internal Revenue Code or other laws

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> administered by the Bureau of Internal Revenue; *(Underscoring supplied)* xxx

Well-settled is the rule that it is the final decision of the CIR or his authorized representative on disputed assessment that is appealable before this Court. The said final decision normally takes the form of the Final Decision on Disputed Assessment (FDDA).

It is undisputed that petitioner ANECO received the FDDA on May 30, 2016 and from such receipt reckoned the 30-day period within which to file the instant petition.

Hence, considering that petitioner timely filed the instant Petition for Review within 30 days from May 30, 2016 or the date of receipt of the FDDA, the Court acquired jurisdiction over the case, pursuant to Section 3, Rule 3 of the Revised Rules of the CTA.

The elevation of the protest before the CIR sans the issuance of the FDDA or the lapse of the 180-day period is of no moment. Such action of petitioner cannot divest this Court of jurisdiction, for what is crucial in conferring jurisdiction on this Court in case of a disputed assessment is the whole or partial denial of the protest by the CIR or his authorized representative, which was subsequently issued and received by the taxpayer prior to the filing of the present Petition for Review.

Moreover, petitioner cannot be faulted, much less prejudiced, for resorting to filing of a Protest (Motion for Reconsideration) before the CIR. As can be gleaned from the records, respondent Tangcor issued a letter[30] addressed to petitioner's General Manager, Mr. Horacio T. Santos, dated March 18, 2016 stating that the request for reinvestigation was not given due course. The letter reads:

xxx xxx xxx

> This is to acknowledge receipt of your letter dated March 14, 2016 requesting for reconsideration or reinvestigation on your deficiency income tax and value added tax for calendar year 2012.

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[30] Supra, note 10

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Last January 4, 2016, the OIC, Chief, Legal Division had accordingly resolved in the favor of the assessment. In his legal opinion, stated:

"It is the view of this office that electric cooperative is not permanently exempt from income tax but only for a period of 30 years from its organization or when it shall become permanently freed from borrowings whichever comes first in accordance with Revenue Memorandum Circular No. 74-2013. The exemption granted to the Electric Cooperative is imposed with certain conditions and is not perpetual in nature." The statement thereon upholds the assessment of the revenue officers appertaining to the MCIT tax deficiency of the Agusan del Norte Electric Cooperative, Inc.

On the second issue, OIC Chief, Legal Division added, that this office debunks the claim of ANECO, Inc. to credit the VAT withheld by the government withholding agents in its favor and stated further that it is clear from the provisions of RMC No. 62-2012 dated October 25, 2012 that Electric Cooperative is liable for VAT and it cannot credit on its own the VAT payments made by the government withholding agents.

<u>Based on the legal opinion mentioned above, your request for reinvestigation was not given due course.</u>

<u>As a normal course of handling assessment, we already issued a Formal Letter of Demand on your deficiency taxes and we therefore reiterate the payment on your deficiency income tax and VAT in the amount of P9,871,631.85 and P2,088,169.10 respectively.</u> *(Underscoring supplied)*

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Given the tenor of the letter, petitioner, who stands to lose millions in pesos, cannot be expected to merely ignore the same and wait for the actual FDDA or the lapse of the 180-day period, as the case may be. In the same vein, petitioner is not in a position to decide for itself whether to treat the letter as tantamount to a denial of its protest ripe for filing of a motion for reconsideration before the CIR or appeal before this Court, or as a mere interlocutory incident.

Indeed, petitioner cannot be made to suffer for being prudent in safeguarding its interest. To rule otherwise would place taxpayers at the mercy of revenue officials who could tweak the correspondences they issue in their favor. Taxpayers will be gravely put at a disadvantage if the regional director, after deciding that he will not give due course to the request for reinvestigation, will later on invoke that the filing of a protest/motion for reconsideration before the CIR is premature for failing to wait for his decision.

Considering that the Court acquired jurisdiction over the case, we shall now proceed to resolve the propriety of the assessment for income tax, VAT and compromise penalties against petitioner.

Petitioner ANECO is exempt from payment of Minimum Corporate Income Tax (MCIT)

Respondents allege that petitioner cannot claim perpetual exemption from income tax under PD 269. According to respondents, under PD 269, petitioner has been granted tax exemption provided it shall operate in conformity with the provisions thereof, the exemption is for 30 years or when the cooperative is completely free from indebtedness incurred by borrowing, whichever comes first.

We are not persuaded.

It is undisputed that petitioner is organized and existing pursuant to PD 269, and is granted a franchise by the National Electrification Commission. Section 39 of PD 269 provides for the exemption from taxes, imposts, duties and fees, to wit:

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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 cooperative is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperatives **(1) shall be permanently exempt from paying income taxes**, and (2) for the 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 comes first occurs, shall be exempt from the payment of (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 improper implementation of the tax exemptions provided for in this Decree. *(Emphasis supplied)*

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It is clear from the foregoing provision that electric cooperatives registered under the NEA shall be exempt from payment of income tax. Respondents' contention that the exemption is merely for a period of thirty (30) years or until the cooperative becomes completely free from indebtedness incurred from borrowing, whichever comes first, is specious. The limit of thirty (30) years pertains to the taxes, fees and charges mentioned in number two, which should be taken to mean as taxes other than income tax.

Considering that petitioner is exempt from income tax by provision of the law, it is likewise exempted from payment of MCIT, it being in the nature of an income tax.

We still find our ruling in *Commissioner of Internal Revenue v. Samar-I Electric Cooperative*[31] apt, *viz*:

> We, thus agree with the following findings of the Court in Division as follows:
>
>> In the case at bar, it is undisputed that petitioner is registered with NEA on February 27, 1974, pursuant to PD 269 xxx. However, the expiration of petitioner's provisional registration with the CDA is irrelevant to the issue on hand since petitioner remained registered with NEA; thus, governed by the provisions of PD 269. This being the case, Section 39 of PD 269 clearly grants tax exemption to electric cooperatives, such as petitioner, from income tax. The Minimum Corporate Income Tax (MCIT) being an income tax; thus, petitioner is logically exempted from the payment of MCIT.

Petitioner is not liable for deficiency VAT

Respondent assessed petitioner of deficiency VAT amounting to ₱2,088,169.10, detailed as follows:[32]

Vatable sales per audit		₱ 208,256,667.02
Multiply by		12%
Output tax		₱ 24,990,800.04
Less: Input tax per VAT Returns		15,165,621.04
VAT due per audit		₱ 9,825,179.00
Less: VAT paid per return	₱ 7,091,261.94	
VAT withheld	1,640,350.24	8,731,612.18
Basic tax deficiency		**₱ 1,093,566.82**

[31] CTA EB No. 460 (CTA Case No. 6697); Samar-I Electric Cooperative v. Commissioner of Internal Revenue, CTA EB No. 462 (CTA Case No. 6697), March 11, 2010
[32] Exhibits "R-12" and "R-14", BIR Records, pp. 540, 774.

Add: 25% Surcharge		273,391.71
20% Interest from 1-25-13 to 3-31-16		696,210.57
Compromise Penalty - late payment		25,000.00
Total VAT deficiency		**₱ 2,088,169.10**

Respondent's audit disclosed that the final VAT Withheld on the generation and transmission charges claimed by the petitioner as tax credit in the amount of ₱1,093,566.82 was disallowed on the ground that the real and actual declarant and claimant of the aforementioned income and the creditable withholding VAT is the power supplier of the Generation and Transmission Company. According to respondent, the cooperative serves only as the collecting arm and the withholding taxes accruing thereon should be tendered to the power supplier. This resulted to the computation of deficiency VAT pursuant to Sections 106, 248 and 249 of the NIRC, as amended.

In the course of his audit, respondent found that there is a variance on the declaration of income for income taxes and on the declaration of receipts for VAT. This was allegedly so because Generation and Transmission companies billed the end-user through the electric cooperative for the sale and transmission of electricity and ancillary service including the VAT thereon. Respondent maintains that the collection shall not form part of the total receipts of the cooperative and shall not claim input tax credits on the transmission charges. As found by respondent, the final VAT withheld on the generation and transmission charges has been claimed by petitioner as tax credit.[33]

On the other hand, petitioner submits that the referred VAT withheld that was disallowed by respondent amounting to ₱1,093,566.82 was part of the total 5% FWVAT in the amount of ₱2,733,917.06 withheld by the government withholding agents.[34]

Petitioner posits that as provided in RMC No. 23-2012, it is the responsibility of the government withholding agents to withhold the correct taxes. In the certificate of final tax withheld at source or BIR Form 2306 prepared by the government withholding agents, the name of petitioner was put as payee. Thus, it is only just and proper that petitioner would claim the tax credits actually withheld by the government withholding agents.[35]

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[33] Exhibit "R-5", BIR Records, p. 431.
[34] Exhibit "P-5", Docket, Vol. II, p. 644.
[35] Exhibit "P-5", Docket, Vol. II, p. 644.

We find for petitioner.

Section 4.114-2 of Revenue Regulation (RR) No. 16-2005, as amended by RR No. 4-2007 provides that income payments made by the government on their purchases of goods and services shall be subject to final withholding VAT of 5%.[36]

A scrutiny of petitioner's Quarterly VAT Returns and the Monthly Schedule of Value-Added Tax Payments per Returns[37] for the CY 2012 reveals the following:

	1st Qtr 2012	2nd Qtr 2012	3rd Qtr 2012	4th Qtr 2012	TOTAL
Vatable Sales	₱ 46,633,181.95	₱ 41,632,010.66	₱ 31,545,017.62	₱ 33,772,489.31	₱ 153,582,699.54
Sale to Government	9,906,384.69	13,780,461.76	15,888,962.88	15,098,158.15	54,673,967.48
Total Sales	**₱56,539,566.64**	**₱55,412,472.42**	**₱47,433,980.50**	**₱48,870,647.46**	**₱208,256,667.02**
					-
Output Tax					-
Vatable Sales	₱ 5,595,981.84	₱ 4,995,841.28	₱ 3,785,402.10	₱ 4,052,698.72	₱ 18,429,923.94
Sale to Government	1,188,766.16	1,653,655.41	1,906,675.55	1,811,778.98	6,560,876.10
Total output tax	**₱ 6,784,748.00**	**₱ 6,649,496.69**	**₱ 5,692,077.65**	**₱ 5,864,477.70**	**₱ 24,990,800.04**
Less: Allowable Input Tax					-
Input Tax Deferred on capital goods exceeding P1M from previous quarter	₱ 357,352.61	₱ 387,532.43	₱ 443,814.64	₱ 483,750.38	₱ 1,672,450.06
Domestic Purchases of Capital Goods Other than Capital Goods	3,532,007.35	3,779,635.94	2,936,932.02	3,244,595.67	13,493,170.98
Total Allowable Input Tax	₱ 3,889,359.96	₱ 4,167,168.37	₱ 3,380,746.66	₱ 3,728,346.05	₱ 15,165,621.04
Net VAT Payable	₱ 2,895,388.04	₱ 2,482,328.32	₱ 2,311,330.99	₱ 2,136,131.65	₱ 9,825,179.00
Less: Tax Credits/ Payments					-
Monthly VAT	₱ 1,430,074.34	₱ 1,545,537.02	₱ 958,525.32	₱ 997,033.96	₱ 4,931,170.64

[36] *Section 4.114-2 of RR No. 16-2005, as amended by RR No. 4-2007* read as:

SEC. 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* -

(a) The government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/ or of services taxed at twelve percent (12%) VAT pursuant to Sees. 106 and 108 of the Tax Code, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof. The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions. instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost.

[37] BIR Records, p. 450.

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Payments					
Final VAT Withheld	495,358.86	689,078.20	794,511.70	754,968.30	2,733,917.06
Total Tax Credits/ Payments	₱ 1,925,433.20	₱ 2,234,615.22	₱ 1,753,037.02	₱ 1,752,002.26	₱ 7,665,087.70
Tax Still Payable	**₱ 969,954.84**	**₱ 247,713.10**	**₱ 558,293.97**	**₱ 384,129.39**	**₱ 2,160,091.30**

Respondent's asseverations that petitioner cannot claim the withholding VAT as the latter was not given the authority to claim for their own VAT payable and that it has the obligation to forward the withholding tax certificate to the proper claimant[38] is of no moment since petitioner already declared the sales to government amounting to ₱54,673,967.48 related to the entire VAT withheld of ₱2,733,917.06. Consequently, petitioner can rightfully claim the said creditable VAT actually withheld by the government withholding agents.

Petitioner is not liable for Compromise Penalty

Respondent imposed compromise penalty in the total amount of ₱76,000.00[39] against petitioner for its failure to pay the required tax on time and non-filing of quarterly income tax returns, detailed as follows:

Late payment of Income Tax	₱ 25,000.00
Non-filing of quarterly income tax returns	25,000.00
VAT - late payment	25,000.00
Withholding Tax (expanded) - late payment	1,000.00
Total amount due and collectible	**₱ 76,000.00**

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code.[40] Under RMO No. 01-90, as amended by RMO No. 19-2007, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly

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[38] Exhibit "R-7", BIR Records, p. 527.
[39] Exhibit "P-32", Docket, Vol. II, p. 710.
[40] *The Philippine International Fair, Inc. vs. The Collector of Internal Revenue, et. al.* G.R. Nos. L-12928 and L-12932, March 31, 1962.

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belongs to the taxpayer.[41] Absent a showing that petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[42]

Since there is nothing in the records which would show that petitioner consented to the compromise penalty, the amount of suggested compromise penalties of ₱76,000.00 cannot be sustained.

WHEREFORE, in view of the foregoing, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and value-added tax assessments issued by respondent against petitioner are **CANCELLED AND SET ASIDE.**

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, Special First Division

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[41] *Phil. International Fair, Inc. vs. The Collector of Internal Revenue, et. al.,* G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 781.

[42] *Commissioner of Internal Revenue vs. Liangga Bay Logging Co., Inc.*, G.R. No. L-35266, January 21, 1991, 193 SCRA 92-93.