REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MISAMIS ORIENTAL RURAL ELECTRIC SERVICE COOPERATIVE, INC. (MORESCO 1),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL (CIR),
Respondent.

CTA CASE NO. 10987

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

Promulgated:
OCT 15 2025
4:00 p.m.

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DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* prays that the Court nullify and cancel the *Final Assessment Notice* (FAN)/*Formal Letter of Demand* (FLD) dated June 9, 2022 issued against petitioner.[1]

THE PARTIES

Petitioner Misamis Oriental Rural Electric Service Cooperative, Inc. (MORESCO 1) is registered with the National Electrification Administration (NEA).[2]

Respondent Commissioner of Internal Revenue is the duly appointed authority to administer and enforce all internal revenue laws in the land.[3]

[1] Statement of the Case, Pre-Trial Order dated May 26, 2023, Docket – Vol. I, p. 445.
[2] Exhibit "P-26", Docket – Vol. I, p. 299.
[3] Par. 2, Summary of Admitted Facts, *Joint Stipulation of Facts And Issues* (JSFI), Docket – Vol. I, p. 427.

THE FACTS OF THE CASE

On September 12, 2019, respondent through its Revenue Region No. 16 for Revenue District Office No. 98, Cagayan De Oro City, issued *Letter of Authority* (LOA) No. 098-2019-00000341/eLA201200016600[4] for taxable year 2017 (together with the *Checklist of Requirements*)[5] which petitioner received on September 20, 2019. The LOA issued by Regional Director (RD) Nuzar Balatero, designated Revenue Officer (RO) Sittie Norhata A. Calbe as the examiner in charge under Group Supervisor (GS) Dante Velayo.[6]

Respondent then issued the letter dated January 14, 2020,[7] requesting for additional documents in order to verify petitioner's tax liabilities.[8] Thereafter, respondent's *First Notice* dated January 27, 2020 was issued.[9]

The *Second and Final Notice* from respondent dated March 2, 2020 was then received by petitioner on March 3, 2020.[10]

On October 1, 2020, the *Subpoena Duces Tecum* SDT No. RR16-2020-226 was issued.[11]

Respondent subsequently issued the *Notice of Discrepancy* dated February 16, 2021,[12] signed by Revenue District Officer Gledonio B. Teope Jr. Petitioner submitted its *Reply to the Notice of Discrepancy* dated March 10, 2021.[13]

Subsequently, petitioner submitted to respondent a letter with subject *Added Explanation and Supporting Documents to the Notice of Discrepancy* dated March 22, 2021.[14] Then, on March 24, 2021, petitioner wrote another letter requesting for additional extension to submit sufficient documents needed for reconciliation.[15]

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[4] Exhibit "P-2", Docket – Vol. I, p. 35; BIR Records (Exhibit "R-23"), p. 49.
[5] Exhibit "P-3", Docket – Vol. I, p. 36; Exhibit "R-1", BIR Records (Exhibit "R-23"), p. 48.
[6] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427.
[7] Exhibit "P-5", Docket – Vol. I, p. 39; Exhibit "R-2", BIR Records (Exhibit "R-23"), p. 52.
[8] Par. 4 (3), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427.
[9] Par. 4 (4), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427; Exhibit "P-6", Docket – Vol. I, p. 40; Exhibit "R-3", BIR Records (Exhibit "R-23"), p. 54.
[10] Par. 4 (5), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427; Exhibit "P-8", Docket – Vol. I, p. 42; Exhibit "R-4", BIR Records (Exhibit "R-23"), p. 57.
[11] Par. 4 (6), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427; Exhibit "P-10", Docket – Vol. I, p. 62; Exhibit "R-6", BIR Records (Exhibit "R-23"), p. 72.
[12] Par. 4 (7), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427; Exhibits "P-13" and "P-13-A", Docket – Vol. I, pp. 94 to 101; Exhibit "R-7", BIR Records (Exhibit "R-23"), pp. 575 to 588.
[13] Par. 4 (8), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427; Exhibit "P-15", Docket – Vol. I, pp. 106 to 196; Exhibit "R-8", BIR Records (Exhibit "R-23"), pp. 589 to 679.
[14] Par. 4 (9), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427; Exhibit "P-18", Docket – Vol. I, pp. 210 to 220; Exhibit "R-10", BIR Records (Exhibit "R-23"), pp. 715 to 724.
[15] Par. 4 (10), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427; Exhibit "P-19", Docket – Vol. I, p. 221.

The *Amended Notice of Discrepancy*, in the amount of ₱57,985,045.28 dated May 11, 2021,[16] was duly received by petitioner.[17]

On May 20, 2021, petitioner sent a *Reply to the Amended Notice of Discrepancy*.[18]

Thereafter, RO Sittie Norhata A. Calbe issued the *Memorandum* dated February 9, 2022,[19] recommending that petitioner's docket be forwarded to the Regional Office for issuance of Assessment Notices to effect tax collection.

On April 20, 2022, respondent issued the *Preliminary Assessment Notice* (PAN),[20] informing petitioner that after investigation, it was ascertained that there is still due from petitioner the total amount of ₱62,453,122.55, representing income tax and value-added tax (VAT) assessments, with interests, for taxable year 2017. The PAN was received by petitioner on May 20, 2022.[21]

Thereafter, on May 30, 2022, petitioner filed its *Protest to the Preliminary Assessment Notice for Taxable Year 2017 with Request for Reinvestigation* of even date.[22]

Respondent issued the FAN dated June 7, 2022/FLD dated June 9, 2022, with attached *Details of Computation* and *Details of Discrepancy*,[23] assessing petitioner in the total amount of ₱63,149,341.04, representing income tax and value-added tax (VAT) assessments, with interests, for taxable year 2017. The said FAN/FLD was received by petitioner on June 27, 2022.[24]

Thus, on June 28, 2022, petitioner filed with the BIR its *Protest to the Final Assessment Notice for Taxable Year 2017 with Request for Reinvestigation* of even date.[25]

On June 29, 2022, petitioner paid the assessed VAT liability amounting to ₱8,976,102.82 through the BIR's e-Filing and Payment System (eFPS).[26]

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[16] Exhibits "P-21" and "P-21-A", Docket – Vol. I, pp. 226 to 231; Exhibit "R-11", BIR Records (Exhibit "R-23"), pp. 741 to 746.

[17] Par. 4 (11), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427.

[18] Par. 4 (12), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427; Exhibit "P-22", Docket – Vol. I, pp. 239 to 256; Exhibit "R-12", BIR Records (Exhibit "R-23"), pp. 760 to 776.

[19] Exhibit "R-14", BIR Records (Exhibit "R-23"), p. 873. Par. 4 (13), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427.

[20] Exhibit "P-25", Docket – Vol. I, pp. 287 to 298; Exhibit "R-15", BIR Records (Exhibit "R-23"), pp. 883 to 894.

[21] Par. 4 (14), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427.

[22] Exhibit "P-27", Docket – Vol. I, pp. 300 to 305; Exhibit "R-17", BIR Records (Exhibit "R-23"), pp. 906 to 911. Par. 4 (15), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427.

[23] Exhibits "P-28" and "P-28-A", Docket – Vol. I, pp. 306 to 321; Exhibit "R-19", BIR Records (Exhibit "R-23"), pp. 917 to 931.

[24] *Id.*; Par. 4 (16), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427.

[25] Exhibit "P-29", Docket – Vol. I, pp. 322 to 325; Exhibit "R-20", BIR Records (Exhibit "R-23"), pp. 939 to 942. Par. 4 (17), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427.

[26] Exhibits "P-30" and "P-30-A", Docket – Vol. I, pp. 326 to 328.

RO Sittie Norhata A. Calbe thereafter issued the *Memorandum* dated August 10, 2022,[27] recommending the issuance of an *Final Decision on Disputed Assessment* (FDDA) on petitioner's income tax liability.

Subsequently, the FDDA dated August 25 2022 was issued by Regional Director Emir U. Abutazil,[28] requesting that petitioner's income tax liability in the amount of ₱48,695,523.88 be paid immediately upon receipt thereof. The said FDDA was received by petitioner on September 9, 2022.[29]

On September 27, 2022, petitioner filed the instant *Petition for Review* .[30]

On January 9, 2023, respondent filed his *Answer*,[31] interposing the following special and affirmative defenses, to wit: (1) petitioner is liable to pay the total tax deficiency in the amount of ₱48,695,523.88 for deficiency income tax for taxable year 2017; (2) the issues on the authority of the ROs and non-revalidation of LOA were never raised by petitioner in the administrative level, thus, petitioner can no longer raise said issues on the ground of laches; (3) the LOA is valid despite not having been revalidated after the lapse of 120 days from its issuance; (4) the assessment is valid and in order; and (5) petitioner was not deprived of due process.

On January 23, 2023, respondent transmitted the *BIR Records* of the present case, consisting of 1025 pages in one (1) folder.[32]

The Pre-Trial Conference was set and held on March 28, 2023.[33] Prior thereto, the *Pre-Trial Brief for Petitioner* was submitted on March 20, 2023;[34] while *Respondent's Pre-Trial Brief* was filed on March 24, 2023.[35]

On April 27, 2023, the parties filed their *Joint Stipulation of Facts and Issues*,[36] which was admitted and approved by the Court in its Minute Resolution dated May 11, 2023,[37] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated May 26, 2023 was then issued.[38]

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[27] Exhibit "R-21", BIR Records (Exhibit "R-23"), pp. 981 to 982. Par. 4 (18), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427.
[28] Exhibit "P-32", Docket – Vol. I, pp. 330 to 338; Exhibit "R-22-a", BIR Records (Exhibit "R-23"), pp. 1004 to 1013.
[29] *Id.*; Par. 4 (19), Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 427.
[30] Docket – Vol. I, pp. 6 to 22.
[31] Docket – Vol. I, pp. 350 to 369.
[32] *Compliance* dated January 19, 2023, Docket – Vol. I, pp. 373 to 375.
[33] Notice of Pre-Trial Conference dated January 11, 2023, Docket – Vol. I, pp. 371 to 372; Minutes of the hearing held on, and Order dated, March 28, 2023, Docket – Vol. I, pp. 419, and 424 to 425, respectively.
[34] Docket – Vol. I, pp. 378 to 383 (Refer to respondent's *Compliance* dated March 24, 2023, Docket – Vol. I, pp. 389 to 391).
[35] Docket – Vol. I, pp. 395 to 400.
[36] Docket – Vol. I, pp. 426 to 434.
[37] Docket – Vol. I, p. 443.
[38] Docket – Vol. I, pp. 445 to 454.

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimony of Ms. Kristina Rae Arengo-Guazon,[39] its Finance Services Department Manager.

On August 10, 2023, petitioner filed *via* accredited courier its *Formal Offer of Evidence*,[40] to which respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on August 24, 2023.[41] In the Resolution dated October 23, 2023,[42] the Court admitted petitioner's exhibits, *except* Exhibit "P-11", for failure to submit the original for comparison.

For his part, respondent presented the testimony of RO Sittie Norhata A. Calbe.[43]

Respondent's Formal Offer of Evidence was filed on March 14, 2024.[44] Petitioner failed to file its comment thereon.[45] In the Resolution dated July 30, 2024,[46] the Court admitted respondent's offered exhibits.

Respondent filed his *Memorandum* on August 30, 2024,[47] while the *Memorandum for the Petitioner* was filed *via* accredited courier on October 4, 2024.[48]

The case was considered submitted for decision on October 21, 2024.[49]

THE STIPULATED ISSUE

The parties stipulated the following issue for this Court's resolution, *viz.*:

> "Whether or not petitioner is liable for income tax assessment, including surcharges and interests for taxable year 2017 in the amount of Php48,695,523.88."[50]

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[39] Exhibit "P-34", Docket – Vol. I, pp. 23 to 30; Minutes of the hearing held on, and Order dated, July 27, 2023, Docket – Vol. II, pp. 457 to 459.
[40] Docket – Vol. II, pp. 460 to 467.
[41] Docket – Vol. II, pp. 470 to 474.
[42] Docket – Vol. II, pp. 477 to 479.
[43] Exhibit "R-24", Docket – Vol. I, pp. 405 to 417; Minutes of the hearing held on, and Order dated, February 29, 2024, Docket – Vol. II, pp. 481 to 482.
[44] Docket – Vol. II, pp. 483 to 493.
[45] Records Verification dated April 15, 2024 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 495.
[46] Docket – Vol. II, pp. 499 to 500.
[47] Docket – Vol. II, pp. 501 to 520.
[48] Docket – Vol. II, pp. 523 to 533.
[49] Minute Resolution dated October 21, 2024, Docket – Vol. II, p. 539.
[50] Issues To Be Tried Or Resolved, JSFI, Docket – Vol. I, p. 428.

THE ARGUMENTS OF THE PARTIES

Petitioner argues that it is permanently exempted from payment of income tax; that there is non-observance of procedural due process by the respondent; and that there is a denial of its substantive due process.

Respondent contends that petitioner is liable to pay total tax deficiency in the amount of ₱48,695,523.88 for deficiency income tax for taxable year 2017; that the issues on the authority of the ROs and non-revalidation of LOA were never raised by petitioner in the administrative level, thus, petitioner can no longer raise said issues on the ground of laches; that the LOA is valid despite not having been revalidated after the lapse of 120 days from its issuance; that the assessment is valid and in order; and that the petitioner was not deprived of due process.

THE RULING OF THE COURT

This Court has jurisdiction over the present case.

Jurisdiction by this Court over the instant case is conferred by Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125[51], as amended by RA No. 9282[52], state 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;**" *(Emphases added)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction of the Commissioner of Internal Revenue ... **may file an appeal**

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

[52] 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.

> **with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein." *(Emphases added)*

In this case, petitioner is appealing the Final Demand Letter of respondent denying petitioner's protest to the FAN. The subject matter of this case is a disputed assessment referred to in the above-mentioned provisions that may be subject of an appeal before this Court.

The FDDA was received by petitioner on September 9, 2022. Petitioner may appeal to this Court within thirty (30) days from receipt thereof. The instant case was timely filed by petitioner on September 27, 2022. Thus, the Court the jurisdiction over the instant case.

Petitioner is exempt from income tax, thus the deficiency income tax assessment against it should be cancelled.

Petitioner argues that, as a non-stock non-profit electric cooperative under the direct control and supervision of the NEA, it is permanently exempted from payment of income tax pursuant to Section 39(a)(1) of PD No. 269, as amended, which is still effective and subsisting.

On the other hand, respondent disagrees, quoting RMC No. 74-2013 and the jurisprudence cited therein. He avers that petitioner was incorporated in May 21, 1968, hence, petitioner's income from its electric service operations is subject to income tax as its tax exemption ended in May 13, 1998 or thirty (30) years after is incorporation.

The Court agrees with petitioner.

Under Section 39(a)(1) of PD No. 269,[53] a law issued on August 6, 1973, electric cooperatives registered with the NEA are permanently exempted from paying income taxes, all national and local taxes, fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and all duties or imposts on foreign goods acquired for its operations for a period ending on

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

December 31 of the 30th full calendar year after the date of its organization or until it shall be completely free of indebtedness, whichever comes first.

To quote the provision:

> "**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 a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: *Provided,* That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree." *(Emphases added)*

However, these exemptions were later withdrawn by Executive Order (EO) No. 93[54] on December 17, 1986, which provides in part:

> "SECTION 1. The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn, xxx:"

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[54] WITHDRAWING ALL TAX AND DUTY INCENTIVES, SUBJECT TO CERTAIN EXCEPTIONS, EXPANDING THE POWERS OF THE FISCAL INCENTIVES REVIEW BOARD AND FOR OTHER PURPOSES.

Nonetheless, the Fiscal Incentives Review Board (FIRB) Resolution No. 24-87, effective July 1, 1987, restored the tax and duty exemptions of electric cooperatives granted by PD No. 269, except that on income tax, to wit:

> "BE IT RESOLVED, as it is 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 therefor 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 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 monetary benefit 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." *(Emphasis and underscoring added)*

On March 10, 1990, Republic Act (RA) No. 6938, otherwise known as the "Cooperative Code of the Philippines" (Cooperative Code) was enacted and on February 10, 1994, the "Omnibus Rules and Regulations on the Registration of Electric Cooperatives Under Republic Act No. 6938" was approved for the purpose of harmonizing the provisions of the Cooperative Code with that of PD No. 269. Subsequently, the Cooperative Code was amended by RA No. 9520, approved on February 17, 2009, known as the "Philippine Cooperative Code of 2008".

Similar tax incentives to cooperatives were granted under the Cooperative Code, as amended by RA No. 9520, particularly, in Articles 60 and 61, the pertinent parts of which are hereunder quoted:

> "ART. 60. *Tax Treatment of Cooperatives.* – **Duly registered cooperatives under this Code** which do not transact any business with non-members or the general public **shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws. Cooperatives not falling under this article shall be governed by the succeeding section.**

ART. 61. *Tax and Other Exemptions.* – Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions:

(1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00) shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry (DTI). All tax-free importations shall not be sold nor the beneficial ownership thereof be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the imposed tax and/or duties.

(2) Cooperatives with accumulated reserves and undivided net savings of more than Ten million pesos (P10,000,000.00) shall pay the following taxes at the full rate:

(a) Income Tax – On the amount allocated for interest on capitals: *Provided*, That the same tax is not consequently imposed on interest individually received by members: *Provided, further*, That cooperatives regardless of classification, are exempt from income tax from the date of registration with the Authority;

(b) Value-Added Tax – On transactions with non-members: *Provided, however*, That cooperatives duly registered with the Authority, are exempt from the payment of value-added tax; subject to Section 109, sub-sections L, M and N of Republic Act No. 9337, the National Internal Revenue Code, as amended: *Provided*, That the exempt transaction under Section 109 (L) shall include sales made by cooperatives duly registered with the Authority organized and operated by its member to undertake the production and processing of raw materials or of goods produced by its members into finished or processed products for sale by the cooperative to its members and non-members: *Provided, further*, That any processed product or its derivative arising from the raw materials produced by its members, sold in the name and for the account of the cooperative: *Provided, finally*, That at least twenty-five *per centum* (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds;

(c) All other taxes unless otherwise provided herein; and

(d) Donations to charitable, research and educational institutions and reinvestment to socioeconomic projects within the area of operation of the cooperative may be tax deductible." *(Emphases added)*

Petitioner is not required to register with the CDA to be exempt from income tax.

Respondent asserts that absent any showing that petitioner is registered with the Cooperative Development Authority (CDA) for the taxable year 2017, petitioner does not enjoy any tax privileges and, as such, is liable for the assessed deficiency income tax.

Respondent's argument is unmeritorious.

The optional registration of existing electric cooperatives under the Cooperative Code is further emphasized in Section 1 of Rule III of the *"Omnibus Rules and Regulations on the Registration of Electric Cooperatives"*, promulgated by the CDA and NEA for the proper guidance and compliance by electric cooperatives. The said Section partly reads:

"SEC. 1. Existing ECs **which shall choose** to register as cooperatives with the CDA shall submit the following documents:

a. A certified copy of the Articles of Incorporation and By-laws filed with the NEA;

b. A copy of the Certificate of Registration with the NEA;

c. Duly audited financial statements for the last two calendar or fiscal years, as the case may be;

d. Copies of the loan agreements between the ECs and the NEA;

e. A sworn statement executed by the treasurer stating the names of the Directors of the EC, the amount of its authorized share capital, subscribed share capital, and the paid-up share, contributed by the members;

f. The favorable endorsement of the National Electrification Commission (NEC) as the government agency authorized to grant, amend, repeal and/or modify franchises for power generation, transmission, and distribution; and

g. The favorable endorsement of the NEA tasked with carrying into effect the declared national policy objectives on rural electrification." *(Emphasis added)*

Thus, an electric cooperative that had previously registered with the NEA could simply opt not to register with the CDA. Such a choice would keep them governed by the provisions of PD No. 269, not the Cooperative Code.

Moreover, RA No. 10531,[55] approved on May 7, 2013, was enacted, among others, to empower and strengthen the NEA to pursue the electrification program and bring electricity, through the electric cooperatives as its implementing arm, to the countryside even in missionary or economically unviable areas, and to empower and enable electric cooperatives to cope with the changes brought about by the restructuring of the electric power industry. Section 12 thereof amended Section 32 of PD No. 269, which reads as follows:

"SEC. 32. *Registration of All Electric Cooperatives.* — **All electric cooperatives may choose to remain as a non-stock, non-profit cooperative or convert into and register as: (a) a stock cooperative under the CDA; or (b) a stock corporation under the SEC, in accordance with the guidelines to be included in the IRR of this Act.**

Such choice shall carry with it the attendant requirements of compliance with the laws and regulatory guidelines governing the respective government agencies having jurisdiction over their registration.

Regardless of the choice made, the NEA shall have the authority over electric cooperatives, whether stock or non-stock, to require the submission of reportorial requirements as may be necessary relative to their operations as electric distribution utilities including, but not limited to:

[55] AN ACT STRENGTHENING THE NATIONAL ELECTRIFICATION ADMINISTRATION, FURTHER AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 269, AS AMENDED, OTHERWISE KNOWN AS THE "NATIONAL ELECTRIFICATION ADMINISTRATION DECREE".

xxx xxx xxx

Electric cooperatives which register with the CDA shall continue to enjoy the benefits under this Act.

Existing electric cooperatives may likewise opt to register as stock corporations with the SEC: *Provided, however*, That electric cooperatives registered with the SEC shall no longer enjoy the incentives provided for in this Act.

Despite the registration of the electric cooperatives under the CDA or the SEC, the NEA shall retain its supervisory and disciplinary power over them in the conduct of its operation as electric distribution utilities." *(Emphases added)*

The above provision shows that the law gives an electric cooperative three (3) options as regards registration. *First*, it may choose to remain as a non-stock, non-profit cooperative. *Second*, it may convert into and register as a stock cooperative under the CDA. *Third*, it may convert into and registered as a stock corporation registered under the Securities and Exchange Commission. Each option carries with it different consequences.

Thus, if an electric cooperative elects the first option, it may remain a non-stock, non-profit entity governed by the provisions of PD No. 269, as amended by RA No. 10531. However, it will not be entitled to the incentives under RA No. 6938.

Significantly, RA No. 10531 did not repeal nor amend Section 39(a)(1) of PD No. 269, which provides for the income tax exemption of electric cooperatives registered with the NEA.

Moreover, it must be emphasized that RA No. 9520 also affirmed the electric cooperative's right to remain registered with the NEA without necessarily registering with the CDA. Section 18 thereof states:

"SEC. 18. A new Chapter on Electric Cooperatives shall be inserted and shall read, as follows:

CHAPTER XVII
ELECTRIC COOPERATIVE

xxx xxx xxx

'ART. 130. *Registration Options of Electric Cooperatives.* — Electric Cooperatives registered with the National Electrification Administration (NEA)

> under Presidential Decree No. 269, as amended which opt not to register with the Authority are allowed to retain the word 'cooperative' in their registered names: *Provided*, That they shall not be entitled to the benefits and privileges under this Code."

In this case, petitioner's *Certificate of Registration*[56] proves that it was registered with the NEA on February 12, 1971. Therefore, it is exempt from income tax under PD No. 269.

Considering petitioner's exemption from income tax, the assessment against it for alleged deficiency income tax has no basis in law. An entity that is not required to pay any income tax in the first place obviously cannot accrue any deficiency income tax. The assessment must consequently be nullified.

ACCORDINGLY, the *Petition for Review* is **GRANTED**.

The FAN/FLD dated June 9, 2022, assessing petitioner for deficiency income tax for taxable year 2017, is **NULL and VOID**. Furthermore, the FDDA dated August 25, 2022, assessing petitioner for deficiency income tax, for taxable year 2017, in the total amount of **₱48,695,523.88**, inclusive of interest, is **CANCELLED** and **SET ASIDE**.

Respondent is hereby **ENJOINED and PROHIBITED** from collecting the amount sought by the void assessment.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(On Official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[56] Exhibit "P-26", Docket – Vol. I, p. 299.

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.

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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice