REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2997** (CTA Case Nos. 9761 & 9819)
-versus-	
BUKIDNON II ELECTRIC COOPERATIVE, INC. (BUSECO), *Respondent.*	

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BUKIDNON SECOND ELECTRIC COOPERATIVE, INC. (BUSECO), *Petitioner,*	**CTA *EB* NO. 3013** (CTA Case Nos. 9761 & 9819)
	Members:
-versus-	**RINGPIS-LIBAN**, *P.J.*, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE (CIR), *Respondent.*	Promulgated: JUL 07 2026 4:22pm

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DECISION

CUI-DAVID, J.:

Before this Court are two *Petitions for Review*: one filed by the Commissioner of Internal Revenue on October 4, 2024,[1] and another filed by Bukidnon Second Electric Cooperative, Inc.

[1] Docket (CTA *EB* No. 2997), pp. 10-18.

(**BUSECO**) on October 28, 2024.[2] Both petitions assail the *Decision*[3] and *Resolution*[4] of the Special Third Division of the Court of Tax Appeals (**Court in Division**), dated November 28, 2023 and August 29, 2024, respectively.

THE PARTIES

BUSECO is a non-stock, non-profit electric cooperative with principal office in Manolo Fortich, Bukidnon. It was issued a Certificate of Registration by the National Electrification Administration (**NEA**),[5] pursuant to Presidential Decree (**PD**) No. 269.[6]

The CIR 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 (**NIRC**) of 1997, as amended, and other laws administered by the Bureau of Internal Revenue (**BIR**).[7]

THE FACTS

The facts, as found by the Court in Division, are as follows:

ANTECEDENTS (ADMINISTRATIVE LEVEL)

<u>For CTA Case No. 9761:</u>

> On August 18, 2014, [BUSECO] was furnished with a copy of Letter Notice (LN) No. 099-RLFTRS-12-00-00024 of even date, signed by Revenue District Officer (RDO) Merlyn DV. Vicente of Revenue District Office No. 99 Malaybalay City, with VAT discrepancies noted, covering calendar year (CY) ending December 31, 2012.

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[2] Docket (CTA *EB* No. 3013), pp. 1-7.
[3] Docket (CTA *EB* No. 2997), pp. 26-46; Docket (CTA *EB* No. 3013), pp. 11-31.
[4] Docket (CTA *EB* No. 2997), pp. 48-55; Docket (CTA *EB* No. 3013), pp. 33-40.
[5] Division Docket (CTA Case No. 9761) — Vol. 1, p. 10, Petition for Review, The Parties, par. 1 *vis-à-vis* Division Docket (CTA Case No. 9761) — Vol. 1, p. 277, Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts, par. 1; Division Docket (CTA Case No. 9819), p. 10, Petition for Review, The Parties, par. 1 *vis-à-vis* Division Docket (CTA Case No. 9761) — Vol. 1, p. 359, JSFI, Summary of Admitted Facts, par.1.
[6] 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 the Terms and Conditions for their Operations, the Repeal of Republic Act No. 6038, and for Other Purposes, August 6, 1973.
[7] Division Docket (CTA Case No. 9761) — Vol. 1, p. 277, JSFI, Summary of Admitted Facts, par.3.

Thereafter, on September 4, 2014, [BUSECO] received the follow up letter dated August 28, 2014 from RDO Vicente.

On October 27, 2015, [BUSECO] received an undated letter from RDO Vicente, informing [BUSECO] that a report of investigation was submitted for appropriate action, and a corresponding Computation Sheet was attached detailing [BUSECO]'s VAT liabilities amounting to P541,621.25, inclusive of legal increments.

Subsequently, on January 13, 2016, [BUSECO] received from Regional Director (RD) Glen A. Geraldino of BIR Revenue Region No. 16, Cagayan de Oro City, the Preliminary Assessment Notice (PAN) dated December 8, 2015, finding [BUSECO] liable for deficiency VAT for TY 2012, in the amount of P495,317.32.

In the letter dated January 28, 2016 addressed to RD Geraldino, [BUSECO] requested [the CIR] for an additional fifteen (15) days within which to address the assessment stated in the aforementioned PAN.

Subsequently, on February 29, 2016, [BUSECO] filed the letter dated February 9, 2016 protesting the PAN.

On March 15, 2016 [BUSECO] received the FLD/FAN, issued by RD Geraldino on February 5, 2016, finding [BUSECO] liable for deficiency VAT, with interest and compromise penalty, in the aggregate amount of P555,585.67.

[BUSECO] sent the letter dated April 7, 2016 to RD Geraldino on even date, stating, among others, that it has been religiously paying its tax due and no deficiency tax has been incurred for the subject period.

Thereafter, on May 29, 2017, [BUSECO] received a new PAN dated May 5, 2017, signed by RD Hermeno A. Palamine, finding [BUSECO] liable with corresponding deficiency taxes for TY 2012:

Tax type	**Basic tax**	**50% surcharge**	**20% interest**	**Total**
Income tax	32,349,671.40	16,174,835.70	27,226,901.52	75,751,408.62
VAT	313,271.67		277,395.63	590,667.30
Compromise penalty				50,000.00
			Grand total	76,392,075.92

[BUSECO] protested the aforementioned new PAN in its letter dated June 5, 2017.

On June 19, 2017, [BUSECO] received a new FLD/FAN dated June 16, 2017, demanding payment of the following deficiency taxes for TY 2012:

Tax type	Basic tax	50% surcharge	20% interest	Total
Income tax	32,349,671.40	16,174,835.70	27,226,901.52	75,751,408.62
VAT	313,271.67		277,395.63	590,667.30
Compromise penalty				50,000.00
			Grand total	76,392,075.92

[BUSECO] received the letter dated July 7, 2017 from RD Palamine on July 20, 2017, informing [BUSECO] that its letter dated June 5, 2017, requesting reconsideration of the tax assessments for TY 2012, was received by [the CIR] on June 23, 2017, and that a subsequent FLD/FAN dated June 16, 2017 was already sent to [BUSECO].

On July 14, 2017, [BUSECO] filed a Protest before Revenue Region No. 16, Malaybalay City, Bukidnon.

<u>For CTA Case No. 9819:</u>

On April 22, 2016, [BUSECO] received a Letter of Authority (LOA) dated April 14, 2016 (SN: eLA201100013013/LOA No. 099-2016-00000086), signed by RD Geraldino, wherein Revenue Officers (ROs) Al Philip Agad, Sittie Aisah Dimaporo, Shiela May Joy Mira, and Group Supervisor (GS) Geraldine Jadap, were authorized to examine [BUSECO]'s books of accounts and other accounting records for all internal revenue taxes for the period TY 2014.

Then, on December 8, 2017, [BUSECO] received the PAN dated December 4, 2017, wherein [the CIR] assessed [BUSECO] with the following deficiency taxes, for TY 2014:

Income tax	45,705,360.83
VAT	8,058,533.33
EWT	321,340.38
Compromise penalties	25,000.00

In the letter dated December 21, 2017, [BUSECO] submitted its protest to the PAN.

On January 5, 2018, [BUSECO] received the FLD/FAN dated December 27, 2017, demanding payment of the following deficiency taxes for TY 2014, *viz.*:

Income tax	47,703,170.33
VAT	8,458,830.31
EWT	336,636.78
Compromise penalties	25,000.00

[BUSECO] then filed its Protest Letter (with request for reconsideration), dated January 23, 2018, on January 29, 2018.

In reply, [the CIR] issued the letter dated February 20, 2018, which was received by [BUSECO] on March 23, 2018, stating, among others, that its "request for reconsideration cannot be granted unless a 'Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code' is executed with a Special Power of Attorney authorizing the person executing such waiver in behalf of the Cooperative."

PROCEEDINGS BEFORE THE COURT IN DIVISION

For CTA Case No. 9761:

Due to [the CIR]'s inaction on [BUSECO]'s request for reconsideration, [BUSECO] filed the present Petition for Review on February 1, 2018.

[The CIR] filed his Answer on May 21, 2018, interposing his special and affirmative defenses.

[The CIR] transmitted to the Court the BIR Records of this case on July 13, 2018.

The Pre-Trial Conference for this case was set and held on July 17, 2018. Prior thereto, [the CIR]'s Pre-Trial Brief was submitted on July 12, 2018; and the Pre-Trial Brief for the [BUSECO] was filed on July 13, 2018.

On August 24, 2018, the parties submitted their Joint Stipulation of Facts and Issues for CTA Case No. 9761. The Pre-Trial Order dated September 6, 2018 was then subsequently issued by the Court, thereby deeming the termination of the Pre-Trial Conference.

In the Resolution dated October 22, 2018, the Court ordered the consolidation of CTA Case No. 9761 with CTA Case No. 9819, and initially scheduled the Pre-Trial Conference for CTA Case No. 9819 on February 7, 2019.

For CTA Case No. 9819:

On April 20, 2018, [BUSECO] filed the present Petition for Review. The case was initially raffled to this Court's Second Division.

On his part, [the CIR] submitted his Answer on July 23, 2018, for this case interposing his special and affirmative defenses.

[The CIR] transmitted to the Court the BIR Records of this case on July 31, 2018.

The Pre-Trial Conference was set on August 30, 2018. During the supposed hearing on the said conference, however, [BUSECO]'s counsel manifested that he will be filing a Motion for the Consolidation of CTA Case No. 9819 with CTA Case No. 9761, raffled with the Court's Third Division, thereby resulting in the cancellation of the said conference.

[The CIR]'s Pre-Trial Brief was submitted on August 24, 2018.

On September 7, 2018, [BUSECO] filed a Motion to Consolidate with Attached Pre-Trial Brief and Judicial Affidavit, attaching therewith the Pre-Trial Brief for [BUSECO] and the Judicial Affidavit of Ms. Christy B. Escarro.

In the Resolution dated September 12, 2018, the Second Division of this Court granted [BUSECO]'s Motion to Consolidate, and directed the consolidation of CTA Case No. 9819 with CTA Case No. 9761, the case bearing the lower docket number, subject to the conformity of the Third Division of this Court.

<u>For the consolidated cases:</u>

During the hearing held on May 14, 2019, the Court directed the parties to proceed to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for possible mediation. However, the parties decided not to have their case mediated by the PMC-CTA.

The Pre-Trial Conference in CTA Case No. 9819 proceeded on September 24, 2019, as earlier scheduled.

Subsequently, the parties submitted their Joint Stipulation of Facts and Issues in CTA Case No. 9819 on November 20, 2019.

In the Resolution dated November 28, 2019, the Court admitted and approved the parties' Joint Stipulation of Facts and Issues in CTA Case No. 9819, thereby deeming the termination of the Pre-Trial in the said case. The Pre-Trial Order was then issued on December 19, 2019.

Trial then ensued, with the parties presenting and offering their respective testimonial and documentary evidence.

[BUSECO] offered the testimonies of the following witnesses, namely: (1) Ms. Christy B. Escarro, [BUSECO]'s Finance Services Department Manager; and (2) Mr. Gervacio I. Piator, the Court-commissioned Independent Certified Public Accountant (ICPA).

On March 10, 2020, the Report of the ICPA for CTA Case No. 9819 was submitted.

On November 9, 2020, [BUSECO] then filed its respective Formal Offer of Evidence for CTA Case Nos. 9761 and 9819. [The CIR] submitted his Comment on November 25, 2020. In the Resolution dated February 4, 2021, the Court admitted [BUSECO]'s offered exhibits, except for the following:

For CTA Case No. 9761:

1. Exhibits "P-2" and "P-5", for being mere provisionally marked photocopies; and,

2. Exhibits "P-6", "P-9", "P-10", "P-11 ", "P-12", "P-13", "P-14" and "P-15", for failure to have the enumerated exhibits marked.

For CTA Case No. 9819:

1. Exhibits "P-2", "P-3", "P-3A", "P-3B", "P-3C", "P-3D", "P-3E", "P-3F", "P-3G", "P-3H", "P-3I", "P-3J", "P-3K", "P-3L", "P-3M", "P-3N", "P-3O", "P-3P", "P-3Q", "P-3R", "P-3S", "P-3T", "P-3U", "P-3V", "P-3W", "P-3X", "P-4A", "P-4B", "P-4C", "P-4D", "P-4E", "P-4F", "P-4G", "P-4H", "P-4I", "P-4J", "P-4K", "P-4L", "P-4M", "P-4N", "P-4O", "P-4P", "P-4Q", "P-4R", "P-4S", "P-4T", "P-4U", "P-4V", "P-4W", "P-4X", "P-5A", "P-5B", "P-5C", "P-5D", "P-6", "P-7", "P-10", and "P-13", for being mere provisionally marked photocopies;

2. Exhibits "P-8", "P-9", "P-11", and "P-12", for failure to have the enumerated exhibits marked; and,

3. The ICPA Report and Judicial Affidavit of ICPA Gervacio I. Piator, which were collectively offered as "P-14" but were marked as "P-19", "P-20", "P-20-A", "P-20-B", and "P-20-B-1".

Thereafter, [the CIR] offered the testimonies of ROs Shiela May Joy Mira and Harly A. Macasling.

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> On July 4, 2022, [the CIR]'s Formal Offer of Evidence was submitted. In the Resolution dated July 27, 2022, the Court submitted [the CIR]'s Formal Offer of Evidence for resolution, in view of [BUSECO]'s manifestation during the hearing held on May 4, 2022 that it will no longer file a comment thereon.
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> Thus, in the Resolution dated September 20, 2022, the Court admitted [the CIR]'s exhibits, except for Exhibits "R-21", "R-23", "R-24" and "R-25", for failure to have the same identified.
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> The Memorandum for the [BUSECO] was filed on August 23, 2022, while [the CIR]'s Memorandum was submitted on November 2, 2022.
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> This case was deemed submitted for decision on November 28, 2022.

On November 28, 2023, the Court in Division promulgated the assailed *Decision*,[8] the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* for CTA Case No. 9761 is **GRANTED**. Accordingly, the assessments for deficiency income tax, VAT and compromise penalty issued against petitioner, in the total amount of P76,392,075.92, for taxable year 2012, are **CANCELLED** and **SET ASIDE**.
>
> On the other hand, the *Petition for Review* for CTA Case No. 9819 is **DISMISSED** on jurisdictional grounds.
>
> **SO ORDERED**.

Aggrieved, the CIR filed a *Motion for Partial Reconsideration (Re: Decision dated 28 November 2023)* on December 28, 2023.[9] In turn, BUSECO filed its *Motion for Reconsideration* by registered mail on January 30, 2024.[10]

Both motions were denied by the Court in Division in a *Resolution* dated August 29, 2024. [11] the dispositive portion of which reads:

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[8] Docket (CTA *EB* No. 2997), pp. 26-46; Docket (CTA *EB* No. 3013), pp. 11-31.
[9] Division Docket (CTA Case No. 9761) – Vol. II, pp. 670-677.
[10] Division Docket (CTA Case No. 9819), unpaged.
[11] Docket (CTA *EB* No. 2997), pp. 48-55; Docket (CTA *EB* No. 3013), pp. 33-40.

> **WHEREFORE**, premises considered, respondent's *Motion for Partial Reconsideration (Re: Decision dated 28 November 2023)* and petitioner's *Motion for Reconsideration* are both **DENIED** for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT *EN BANC*

CTA EB No. 2997

On September 18, 2024, the CIR filed a *Motion for Extension of Time to File Petition for Review*,[12] which the Court *En Banc* granted in a Resolution dated September 23, 2024.[13] Accordingly, the CIR was given a non-extendible period of fifteen (15) days from September 20, 2024, or until October 5, 2024, within which to file the Petition for Review.

The CIR timely filed the *Petition for Review* on October 4, 2024.[14]

On December 9, 2024, the Court directed BUSECO to file its comment on the CIR's *Petition for Review*.[15]

CTA EB No. 3013

On October 28, 2024, BUSECO filed its *Petition for Review*.[16]

On December 11, 2024, the Court *En Banc* directed BUSECO to transmit via electronic mail, a Portable Document Format (PDF) copy of its *Petition for Review*.[17] On January 2, 2025, BUSECO filed a Manifestation confirming its electronic filing of the *Petition for Review*.[18] This was duly noted by the Court in a Resolution dated January 9, 2025.[19]

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[12] Docket (CTA *EB* No. 2997), pp. 1-4.
[13] *Id.* at p. 9.
[14] *Id.* at 10-18.
[15] *Id.* at 65.
[16] Docket (CTA *EB* No. 3013), pp. 1-7.
[17] *Id.* at 49.
[18] *Id.* at 50-51.
[19] *Id.* at 57.

Consolidated Cases

On January 10, 2025, the Court *En Banc* resolved to consolidate CTA *EB* No. 3013, filed on October 28, 2024, with CTA EB NO. 2997, filed on October 4, 2024, pursuant to Section 1, Rule 31 of the Rules of Court, as amended.[20]

On March 13, 2025, BUSECO filed its *Comment.* Thereafter, on March 31, 2025, the CIR filed his *Comment (Re: Petition for Review dated 28 October 2024).*[21]

In a Resolution dated April 25, 2025, the consolidated cases were referred to the Philippine Mediation Center - Court of Tax Appeals (PMC-CTA) for mediation pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[22] However, on June 5, 2025, the PMC-CTA issued a *No Agreement to Mediate*, stating that the parties decided not to have their case mediated.[23]

Thus, on July 9, 2025, the consolidated cases were deemed submitted for decision.

THE ISSUES

In ***CTA EB No. 2997,*** the CIR assigns the following error for the Court's resolution:

> WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED WHEN IT GRANTED RESPONDENT'S PETITION FOR REVIEW FOR CTA CASE NO. 9761, CANCELLING AND SETTING ASIDE THE DEFICIENCY TAX ASSESSMENT FOR TY 2012 IN THE TOTAL AMOUNT SEVENTY-SIX MILLION THREE HUNDRED NINETY-TWO THOUSAND SEVENTY-FIVE PESOS AND NINETY-TWO CENTAVOS (₱76,392,075.92).

In ***CTA EB No. 3013***, BUSECO assigns the following error for the Court's resolution:

> THE HONORABLE SPECIAL THIRD (3RD) DIVISION OF THIS COURT ERRED IN DISMISSING THE PETITION FOR ALLEGEDLY BEING FILED PREMATURELY WITHOUT AWAITING FOR THE FDDA SO THAT THE ASSESSMENT HAS

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[20] Docket (CTA *EB* No. 2997), p. 58.
[21] *Id.* at 66-73.
[22] *Id.* at 76.
[23] *Id.* at 77.

BECOME FINAL AND EXECUTORY, AND IT NO LONGER HAS JURISDICTION OVER THE CASE.

ARGUMENTS

CTA EB No. 2997 (For CTA Case No. 9761)

The CIR argues that Section 13 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, requiring a Letter of Authority (**LOA**) for the examination of a taxpayer's books of accounts, does not apply in this case. According to the CIR, no physical audit or examination of BUSECO's books was conducted. Instead, the assessment was carried out through a "no-contact-audit-approach" under Revenue Memorandum Order (**RMO**) No. 30-2003. This approach relies on the computerized matching of sales and purchases submitted by VAT taxpayers and third-party data to reveal discrepancies.

The CIR asserts that under this computer-matching framework, a Letter Notice (**LN**) serves as a valid notice of audit or investigation; thus, a formal LOA is not strictly required.

Further, the CIR argues that even though the document was titled a "Letter Notice" rather than a "Letter of Authority," the title does not dictate its true nature. Citing the Civil Code, the CIR argues that the true intent of the parties prevails over the title of the document. The CIR maintains that the LN contains the essential elements establishing an agency relationship between the CIR, as principal, and the Revenue Officer (**RO**), as the authorized representative. Furthermore, citing Article 1892 of the Civil Code, the CIR contends that a Regional Director (**RD**), acting as the CIR's agent, has the legal authority to appoint ROs as sub-agents to carry out the tax assessment, provided the principal has not expressly prohibited it.

In its *Comment,* BUSECO asserts that, under Sections 6(A) and 10(C) of the NIRC of 1997, as amended, the issuance of a valid LOA by the Commissioner or a duly authorized representative is a strict statutory requirement before any revenue officer can conduct an audit or examination. It argues that, in the absence of an LOA, the revenue officers who evaluated its tax liabilities acted without authority, rendering the assessment void for lack of jurisdiction.

BUSECO further asserts that this deficiency constitutes a violation of its constitutional right to due process, as it was subjected to an unauthorized and arbitrary determination of tax liability.

Anent the CIR's argument that an LN may substitute an LOA, BUSECO invokes the Supreme Court ruling in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue* (***Medicard***),[24] which categorically held that an LN cannot replace an LOA. An LN is merely a preliminary document highlighting data mismatches from third-party information, not an authorization to audit.

BUSECO further notes that the BIR ignored its own procedural rules under RMO No. 32-2005, which requires the issuance of an LOA if discrepancies identified through an LN remain unresolved after 120 days. Since no LOA was issued despite the lapse of the prescribed period, BUSECO maintains that the entire audit process was unauthorized and, therefore, void.

CTA EB No. 3013 (For CTA Case No. 9819)

In its *Petition*, BUSECO argues that the letter dated February 20, 2018, signed by Regional Director Hermeno Palamine (**RD Palamine**), explicitly denied its request for reconsideration regarding the 2014 tax liabilities. According to BUSECO, the letter stated in no uncertain terms that BUSECO's request could not be granted unless it executed a Waiver of the Defense of Prescription within five (5) days.

BUSECO theorizes that failure to do so meant the assessment would automatically become "final, executory, and demandable". Since BUSECO purposefully chose not to submit the waiver, BUSECO suggests that the administrative process effectively concluded, making the assessment ripe for collection proceedings and triggering the 30-day reglementary period to seek judicial relief.

BUSECO asserts that under Section 7(a)(1) of Republic Act (**RA**) No. 1125 and Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), the CTA's jurisdiction extends beyond

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[24] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017 [Per J. Reyes, Third Division].

formal final decisions to "other matters arising under the National Internal Revenue Code." According to BUSECO, the BIR letter communicating a definitive, enforceable action satisfies this legal definition, giving the CTA full authority to rule on the appeal.

Based on its computation, BUSECO claims that, upon the lapse of the five-day period on March 28, 2018, it had until April 27, 2018, within which to file its appeal. Since it filed its Petition for Review on April 20, 2018, it insists that the filing was timely.

Citing Revenue Regulation (**RR**) No. 8-2013, BUSECO notes that once an assessment "becomes final," the taxpayer is legally barred from presenting newly discovered evidence or challenging its correctness. Thus, it claims that awaiting the issuance of a Final Decision on Disputed Assessment (**FDDA**) would serve no practical purpose, as the matter had already attained finality, rendering any subsequent FDDA moot and academic.

BUSECO also contends that, even if an FDDA is strictly required under normal conditions, the instant case is a clear exception to the doctrine of exhaustion of administrative remedies because the core dispute is purely legal. The central issue is whether BUSECO is permanently exempt from income tax under PD No. 269. Because the BIR has consistently maintained a rigid interpretation that limits the cooperative's exemption, BUSECO alleges that waiting for an FDDA would be an exercise in futility, as the BIR would never alter its long-standing position.

In his *Comment*, the CIR emphasizes that the letter dated February 20, 2018, issued by RD Palamine, was merely a compliance communication. It informed BUSECO of the legal and factual bases for the taxability of its electric service operations and outlined the requirements to move forward. The CIR further asserts that the letter contains no clear, absolute, or unequivocal language indicating a final determination or conclusive denial of BUSECO's tax protest.

Accordingly, the CIR states that the letter simply notified BUSECO that a Waiver of the Defense of Prescription was necessary for the BIR to formally act upon and evaluate its request for reconsideration.

The CIR highlights that, under Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of RR No. 12-1999, a taxpayer must wait for an official final decision on a disputed assessment or allow the designated 180-day administrative review window to expire before appealing to the courts. The CIR echoes the long-standing doctrine that the right to appeal is a statutory privilege that can only be exercised strictly within the manner prescribed by law. According to the CIR, because BUSECO filed its original *Petition for Review* prematurely without waiting for an FDDA, it failed to perfect its appeal in the manner required by the rules, and the CTA failed to obtain jurisdiction over CTA Case No. 9819.

THE COURT *EB BANC'S* RULING

The Court En Banc has jurisdiction over the instant Petitions for Review.

Before delving into the merits of the case, the Court *En Banc* must first determine whether it properly acquired jurisdiction over the present *Petitions.*

On August 29, 2024, the Court in Division denied, for lack of merit, the CIR's *Motion for Partial Reconsideration (Re: Decision dated 28 November 2023),* and BUSECO's *Motion for Reconsideration.* Based on the records, the *Resolution* denying these motions was received by the CIR, through the Office of the Solicitor General, on **September 9, 2025**, and by BUSECO on **October 16, 2024**.[25]

Under Section 3(b), Rule 8[26] of the RRCTA, both parties had fifteen (15) days from receipt of the assailed *Resolution* to file their respective *Petitions for Review.* Accordingly, the CIR had until **September 24, 2024**, while BUSECO had until **October 31, 2024**, to file their *Petitions.*

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[25] Docket (CTA *EB* No. 2997), pp. 48-55; Docket (CTA *EB* No. 3013), pp. 33-40.

[26] Section 3. Who May Appeal; Period to File Petition. — ...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

On September 18, 2024, within the reglementary period, the CIR filed a *Motion for Extension of Time to File Petition for Review*,[27] which was granted on September 23, 2024.[28] The CIR was thus given until **October 5, 2024** within which to file the *Petition for Review*. Accordingly, the CIR timely filed his *Petition for Review* on **October 4, 2024**.[29]

On the other hand, BUSECO filed its *Petition for Review* on **October 28, 2024**.[30] It likewise timely filed its *Petition for Review*.

Having established that jurisdiction over the *petitions* was properly acquired, the Court *En Banc* now proceeds to resolve the same on the merits.

<u>CTA EB No. 2997</u>

The CIR's Petition for Review is dismissible for lack of deputation from the Office of Solicitor General.

The Court in Division correctly held in CTA Case No. 9761 that the absence of a Letter of Authority renders the assessment void.

While the CIR's appeal was timely filed, a review of the records reveals that no written deputation or authority from the OSG authorizing the filing of the *Petition for Review* was attached thereto by the CIR. In the absence of such deputation, the CIR's *Motion for Extension of Time to File Petition for Review and Petition for Review* are procedurally dismissible for lack of authority of its counsels to file, consistent with settled jurisprudence recognizing the OSG as the statutory counsel of the CIR before the CTA.[31]

In any case, even assuming that the CIR's counsels had the authority to file the present appeal, his *Petition for Review* must be dismissed for lack of merit as discussed below.

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[27] Docket (CTA *EB* No. 2997), pp. 1-4.
[28] *Id.* at 9.
[29] *Id.* at 10-18.
[30] Docket (CTA *EB* No. 3013), pp. 1-7.
[31] *Commissioner of Internal Revenue v. Second Division of the Hon. Court of Tax Appeals*, G.R. No. 280165, August 4, 2025 [Per J. Inting, Third Division], citing ADM. CODE (1987), Book IV, Title III, Chapter 12, sec. 35(1).

The CIR argues that the requirement of an LOA does not apply in this case because there was no actual physical examination of BUSECO's books of accounts. According to the CIR, the assessment was conducted through a "no-contact-audit-approach" under RMO No. 30-2003, for which an LN suffices. The CIR further argues that the LN establishes the necessary agency relationship between the CIR, as principal, and the Revenue Officer, as agent, and that the Revenue Regional Director, acting as the CIR's agent, may validly appoint ROs as sub-agents.

In its *Comment*, BUSECO asserts that the issuance of a valid LOA by the Commissioner or a duly authorized representative is a mandatory statutory requirement before any revenue officer may conduct an audit or examination. Citing *Medicard,* it argues that an LN cannot substitute for an LOA. Absent such authority, BUSECO argues, the revenue officers had no legal basis to examine its records, thereby rendering the assessment void.

The Court *En Banc* finds in favor of BUSECO.

The power to assess necessarily includes the authority to examine taxpayers to determine the correct amount of tax due.[32] Verily, the law vests the BIR with general powers in relation to the assessment and collection of all internal revenue taxes.[33] However, only the CIR or a duly authorized representative may authorize the examination of a taxpayer and the issuance of an assessment.

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[34] The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.[35]

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[32] *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division].
[33] *Id.*
[34] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].
[35] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez. J., Third Division].

Sections 6(A), 10(c), and 13 of the NIRC of 1997, as amended, collectively establish that only ROs acting pursuant to a duly issued LOA may validly conduct examinations and recommend assessments, *viz.*:

> **SEC. 6**. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: ....
>
> . . . .
>
> **SEC. 10**. *Revenue Regional Director.* — ..., the **Revenue Regional Director shall**, within the region and district offices under his jurisdiction, among others:
>
> . . . .
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.]
>
> . . . .
>
> **SEC. 13**. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, ..., a Revenue Officer assigned to perform assessment functions in any district may, <u>**pursuant to a Letter of Authority issued by the Revenue Regional Director**</u>, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. (Emphasis supplied)

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* ***(McDonald's)***,[36], the Supreme Court emphasized that the issuance and proper service of an LOA upon the taxpayer are indispensable requirement of due process. The LOA apprises the taxpayer of the identity and authority of the ROs tasked to conduct the audit, thereby enabling the taxpayer to verify that such officers are duly

[36] *Id.*

authorized to examine the taxpayer's books and other accounting records, *viz.*:

> To comply with due process in the audit or investigation by the BIR, **the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts.** The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, **identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment**. (Emphasis supplied)

In this case, BUSECO was furnished only with LN No. 099-RLFTRS-12-00-00024 dated August 18, 2014, signed by Revenue District Officer (**RDO**) Merlyn DV. Vicente of Revenue District Office No. 99 Malaybalay City, indicating VAT discrepancies for taxable year (**TY**) ending December 31, 2012. However, BUSECO did not receive any LOA for the audit and investigation in question.

Crucially, the CIR's theory—that an LOA may be dispensed with because the audit was "no-contact" and involved no physical examination of books—has already been squarely rejected by the Supreme Court in *Medicard*. There, the Supreme Court categorically held that an LOA cannot be dispensed with merely because none of the taxpayer's financial books or records was physically examined. Section 6 of the NIRC of 1997, as amended, expressly requires prior authority from the CIR or a duly authorized representative before an examination "of a taxpayer" may be undertaken. Thus, the requirement for an LOA does not depend on the manner of examination—whether through physical inspection, computerized matching, third-party data reconciliation, or any other so-called "no-contact"

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method—but on the fact that the taxpayer is being subjected to an examination for purposes of determining tax liability.

As the Supreme Court explained in *Medicard People v. Gernale*,[37] citing:

> Since the law specifically requires an LOA **and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA**, the absence thereof cannot be simply swept under the rug, as the CIR would have it.
>
> Simply put, **LN is entirely different and serves a different purpose than an LOA**. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.
>
> **[A]n LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined**. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. **The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records** but only on whether a taxpayer is being subject to examination. (Emphasis supplied)

Put differently, the LOA requirement attaches once the BIR undertakes an examination of the taxpayer, regardless of whether such examination is conducted through computerized matching, third-party data reconciliation, or any so-called "no-contact" method.

This doctrine was reiterated and further clarified in the more recent case of *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*[38] where the Supreme Court held that an LN "is not a substitute for an LOA":

> Unfortunately for the CIR, an LN is not a substitute for an LOA. The Court has held that a computerized LN merely informs a taxpayer of a discrepancy and urges voluntary compliance; it is not an authority to examine and does not empower an RO to conduct an audit without an LOA. The BIR's own issuances, RMO 30-2003 and RMO 42-2003, distinguish an LN from a formal LOA.

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[37] G.R. No. 256868, October 4, 2023 [Per J. Kho, Jr., Second Division].
[38] G.R. No. 259729, November 17, 2025 [Per J. Singh, Third Division].

The Supreme Court likewise stressed that internal BIR memoranda or audit workload assignments cannot take the place of the statutorily required LOA. An LOA is issued to the taxpayer and gives notice of who will examine its books.[39]

In light of the foregoing jurisprudence, the CIR's contention that an LN may be treated as a substitute for an LOA, or that an LOA may be dispensed with merely because the audit was allegedly "no-contact," is plainly untenable and deserves scant consideration.

All told, the Court *En Banc* finds no cogent reason to disturb the ruling of the Court in Division in CTA Case No. 9761.

<u>CTA EB No. 3013</u>

The Court in Division has jurisdiction over CTA Case No. 9819.

BUSECO argues that the BIR Letter dated February 20, 2018 effectively operated as a denial of its protest. BUSECO emphasizes that the Letter unequivocally stated that unless it executed a waiver within five (5) days, the assessment would become "final, executory, and demandable." Thus, by opting not to submit the waiver, BUSECO claims that the administrative process had effectively ended, thereby triggering the 30-day reglementary period to seek judicial relief. BUSECO maintains that the Letter falls within the CTA's jurisdiction over "other matters" arising under the NIRC. Furthermore, it invokes an exception to the doctrine of exhaustion of administrative remedies, asserting that the controversy involves a purely legal question concerning its alleged tax-exempt status under PD No. 269, thereby rendering any further wait for a formal decision futile.

In response, the CIR counters that the February 20, 2018 Letter was merely an informational compliance communication and not a final, reviewable decision. The CIR explains that the Letter contains no absolute or unequivocal language denying the protest; rather, it simply outlines the legal bases for the assessment and informs BUSECO that a waiver is required

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[39] *Id.*

before the BIR can act on and evaluate its request for reconsideration.

The CIR further contends that, under the governing rules, a taxpayer must either await the issuance of an FDDA or allow the lapse of the 180-day administrative period before seeking judicial recourse. Emphasizing that the right to appeal is a statutory privilege that must be strictly complied with, the CIR argues that BUSECO's premature recourse to the courts circumvented mandatory procedural requirements. Thus, the CIR posits that the appeal was not properly perfected and that the CTA did not acquire jurisdiction over the case.

The Court *En Banc* rules in favor of BUSECO.

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 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.[40]

Section 7(a)(1) and (2) of RA No. 1125,[41] as amended by RA No. 9282,[42] vests the Court of Tax Appeals (**CTA**) with exclusive appellate jurisdiction to review decisions or inactions of the CIR involving disputed assessments and other matters arising under the NIRC.[43]

Corollarily, Section 11 of the same law provides that an appeal may be filed within thirty (30) days from receipt of the decision or ruling, or from the expiration of the period fixed by

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[40] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015 [Per J. Perlas Bernabe, First Division].

[41] An Act Creating the Court of Tax Appeals, June 16, 1954.

[42] 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, March 30, 2004.

[43] SEC. 7. *Jurisdiction*. – **The CTA shall exercise**:
(a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
(1) **Decisions of the [CIR] in cases involving disputed assessments**, ... or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) **Inaction by the [CIR] in cases involving disputed assessments**, ..., or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, ...

law for the CIR to act.[44] These provisions are echoed in Section 3(a)(1) and (2), Rule 4,[45] and Section 3(a), Rule 8[46] of the RRCTA.

Likewise relevant is Section 3.1.4 of RR No. 12-1999,[47] as amended by RR No. 18-2013,[48] which governs administrative protests against a FAN/FLD. Under the regulation, if the protest is denied, in whole or in part, by the CIR or the latter's duly authorized representative, the taxpayer may appeal to the CTA within thirty (30) days from receipt of the decision. In case of inaction within the 180-day period, the taxpayer may either appeal to the CTA within thirty (30) days after the lapse of the 180-day period or await the final decision and appeal therefrom. The taxpayer's choice between these remedies is mutually exclusive.

Sections 3.1.4 and 3.1.5 provide:

> **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 ...
>
> . . . .
>
> If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation

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[44] SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any <u>party adversely affected</u> by a decision, ruling, or inaction of the [CIR]**...may file an **appeal 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. ...**

[45] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(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 <u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

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

[47] 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.

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

> shall be granted on tax assessments that have already become final, executory and demandable.
>
> 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. ...
>
> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
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> . . . .
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.
>
> **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 final decision.

Central to the resolution of this case is whether the *Letter* dated February 20, 2018, issued by RD Palamine, constitutes a decision appealable to the CTA. The pertinent portions of the Letter state:

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> This pertains to your letter requesting for reconsideration against the issued Final Assessment Notice and Formal Letter of Demand (FAN/FLD) pursuant to Letter of Authority No. 099-2016-00000086 (eLA201100013013) dated April 14, 2016 as a result of the investigation of your 2014 all internal revenue tax liabilities [*sic*].
>
> Please be apprised that the Bureau sustained the taxability of your income from electric service operations and Other sources considering Revenue Memorandum Circular No 074-2013. Moreover, **your request for reconsideration cannot be granted** unless a "Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code" is executed with a Special Power of Attorney authorizing the person executing such waiver in behalf of the Cooperative.
>
> In view thereof, you are advised to submit duly executed Waiver with Special Power of Attorney within five (5) days from the receipt hereof. **Otherwise, the assessment become final, executory, and demandable**. (Emphasis supplied)

According to BUSECO, because it deliberately chose not to execute the waiver, the February 20, 2018 Letter effectively operated as a denial of its protest, thereby rendering the assessment final and appealable.

The Court *En Banc* finds merit in BUSECO's contention.

The language of the Letter is clear and unequivocal. It expressly states that unless BUSECO executed the requested waiver within five (5) days, the assessment would become "**final, executory, and demandable**." Although the finality of the assessment was conditioned upon the non-execution of the waiver, the condition was eventually fulfilled by the lapse of the period stated in the Letter itself. Consequently, the Letter effectively operated as the CIR's **final action** on BUSECO's protest.

The Court *En Banc* further notes that the confusion regarding the proper remedy stemmed from RD Palamine's unconventional and improper insistence on the execution of a Waiver of the Statute of Limitations as a condition for resolving the protest. To dismiss BUSECO's *Petition* on jurisdictional grounds under these circumstances would unjustly penalize the taxpayer for relying on the very representations made by the BIR itself.

Indeed, RD Palamine's demand for the execution of a waiver was highly improper.

First, the resolution of a protest against a FAN/FLD should not be conditioned upon the execution of a waiver. Section 3.1.4 of RR No. 12-1999,[49] as amended, mandates the CIR or the latter's duly authorized representative to act on the protest within the prescribed 180-day period. Nothing in the NIRC or the implementing regulations authorizes the BIR to suspend or withhold action on a protest pending the taxpayer's execution of a waiver.

Second, a waiver, by its nature, must be voluntary. As held in *People v. Donato*,[50] a waiver is the voluntary and intentional relinquishment of a known right, *viz.*:

> Waiver is defined as "a **voluntary** and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it." (Emphasis supplied)

Here, however, the "advice" to execute a waiver was accompanied by the threat that failure to do so would render the assessment "final, executory, and demandable." Such ultimatum negates the voluntary character essential to a valid waiver.

Third, the waiver was being demanded only after the issuance of the FAN/FLD. At that stage, the waiver had already become inutile for purposes of extending the prescriptive period for assessment. The issuance of the FAN/FLD[51] already interrupts the running of the period to assess taxes. If the FAN/FLD had already been issued beyond the prescriptive period, a subsequently executed waiver could not revive an assessment that had already prescribed.

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[49] 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.

[50] G.R. No. 79269, June 5, 1991 [Per J. Davide, Jr., *En Banc*], cited in *Calfurn Mfg. Philippines, Inc. v. Quinsaat*, CTA *EB* Case No. 2953 (CTA AC No. 253), January 15, 2026 [Per J. Reyes-Fajardo, *En Banc*].

[51] See Section 203, NIRC.

Fourth, the non-execution of a waiver is not among the grounds recognized by law for rendering an assessment final and executory. An assessment becomes final only upon the taxpayer's failure to timely protest the FAN/FLD, failure to appeal an FDDA, or failure to avail of the remedies provided by law. Neither the NIRC nor RR No. 12-1999 provides that refusal to execute a waiver results in the automatic finality of the assessment.

All told, BUSECO was left with no viable recourse. Faced with the BIR's express declaration that the assessment would become "**final, executory, and demandable**" absent the execution of a waiver, BUSECO could not be faulted for seeking immediate judicial relief before the CTA. Under the peculiar circumstances of this case, the Letter bore both the tenor of denial and the tenor of finality sufficient to confer jurisdiction upon the Court in Division.

This conclusion is reinforced by another Letter dated January 15, 2018, likewise signed by RD Palamine, which stated that BUSECO's request for reconsideration or reinvestigation would be given due course only if it executed a duly notarized Waiver of the Statute of Limitations. Taken together, these communications unmistakably conveyed that failure to execute the waiver would terminate administrative recourse.

At any rate, even assuming *arguendo* that the Letter cannot be strictly considered an FDDA under RR No. 12-1999, as amended, the Court *En Banc* still finds that the Court in Division properly acquired jurisdiction over CTA Case No. 9819 under its jurisdiction over "**other matters**" arising under the NIRC.

To reiterate, Section 7(a)(1) of RA No. 1125,[52] as amended by RA No. 9282,[53] expressly grants the CTA exclusive appellate jurisdiction over decisions of the CIR in cases involving disputed assessments, or "**other matters arising under the NIRC**."

[52] An Act Creating the Court of Tax Appeals, June 16, 1954.

[53] 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, March 30, 2004.

The phrase "other matters arising under the NIRC" is deliberately broad and comprehensive. The CTA's appellate jurisdiction is not confined solely to formal FDDAs denominated as such by the BIR, but extends to official acts, rulings, and determinations of the CIR or the latter's authorized representatives issued pursuant to powers exercised under the NIRC and which substantially affect the rights, obligations, or remedies of taxpayers.

In the instant case, the assailed February 20, 2018 Letter was issued by RD Palamine in the exercise of delegated authority under the NIRC and in connection with the BIR's assessment powers. Significantly, the Letter did not merely provide informational guidance. It categorically: (1) sustained the taxability of BUSECO's income; (2) declared that BUSECO's request for reconsideration "cannot be granted" unless a waiver was executed; and (3) warned that failure to execute the waiver within five (5) days would cause the assessment to become "final, executory, and demandable."

Clearly, the Letter substantially affected BUSECO's substantive and procedural rights. It imposed a condition before the protest could be acted upon and threatened the finality of the assessment upon non-compliance therewith. Such pronouncements are neither ministerial nor merely advisory, but constitute official determinations made in the exercise of powers under the NIRC.

Accordingly, even assuming that the Letter does not strictly constitute an FDDA, it nonetheless qualifies as a **decision or determination on "other matters" arising under the NIRC,** properly cognizable by the CTA under Section 7(a)(1) of RA No. 1125, as amended.

Hence, the Court *En Banc* finds that the Court in Division properly acquired jurisdiction over CTA Case No. 9819

Having so ruled, the Court *En Banc* shall now proceed to resolve the case on the merits.

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BUSECO is exempt from income tax.

In its *Comment* to the CIR's *Petition for Review,* BUSECO asserts that it is permanently exempt from income tax under Section 39(a)(1) of PD No. 269.[54] It emphasizes that the exemption has not been repealed by subsequent laws, including PD No. 1645,[55] RA No. 6938,[56] or RA No. 10531.[57] BUSECO also invokes RMC No. 72-2003,[58] wherein the CIR "recognized and [honored]" the "permanent income tax exemption of electric cooperatives."

The CIR, however, argues that BUSECO is not exempt from income tax, citing RMC No. 74-2013, PD No. 1955,[59] and EO No. 93, series of 1986.[60]

The Court *En Banc* finds for BUSECO.

This issue of whether electric cooperatives remain exempt from income tax is no longer novel. The Court has consistently upheld the income tax exemption of electric cooperatives.

Section 39 of PD No. 269 provides:

> 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 cooperatives is necessary and appropriate:

[54] 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.

[55] AMENDING PRESIDENTIAL DECREE NO. 269, INCREASING THE CAPITALIZATION AND BROADENING THE LENDING AND REGULATORY POWERS OF THE NATIONAL ELECTRIFICATION ADMINISTRATION AND FOR OTHER PURPOSES.

[56] AN ACT TO ORDAIN A COOPERATIVE CODE OF THE PHILIPPINES

[57] 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"

[58] SUBJECT: Tax Implications of Electric Cooperatives Registered with the National Electrification Administration and Cooperative Development Authority

[59] WITHDRAWING, SUBJECT TO CERTAIN CONDITIONS, THE DUTY AND TAX PRIVILEGES GRANTED TO PRIVATE BUSINESS ENTERPRISES AND/OR PERSONS ENGAGED IN ANY ECONOMIC ACTIVITY, AND FOR OTHER PURPOSES

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

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, **a cooperative (1) shall be permanently exempt from paying income taxes,** and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or 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. (Emphasis supplied)

In *Commissioner of Internal Revenue v. Samar-I Electric Cooperative, Inc.*,[61] the Court *En Banc* clarified that PD No. 269 was not repealed by the Cooperative Code:

Article 127 of the Cooperative Code reads:

ARTICLE 127. Repeals. — Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provisions of this Code shall be deemed repealed: Provided, however, **That nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269**: Provided, further, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof.

A plain reading of the above provision shows that PD 269 is not amended nor repealed by the enactment of the Cooperative Code. Thus, the exemption from paying taxes of electric cooperatives under Section 39 of PD 269 still applies, which reads: ...

. . . .

[61] CTA *EB* Case No. 460 & 462, March 11, 2010 [Per J. Castaneda, Jr., *En Banc*].

We, thus, agree with the following findings of the Court in [D]ivision as follows:

> In the case at bar, it is undisputed that petitioner is registered with NEA on February 27, 1974, pursuant to PD 269; and was issued a Certificate of Provisional Registration by the CDA on March 16, 1993. This Court agrees with respondent's position that the provisional registration of petitioner is good only for two years, pursuant to Section 4 of the "Guidelines on the Provisional Registration of Electric Cooperatives with the CDA". **<u>Obviously, the provisional registration of petitioner had already expired in 1995. 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.</u>** The Minimum Corporate Income Tax (MCIT) being an income tax; thus, petitioner is logically exempted from the payment of MCIT. (Emphasis supplied)

A plain reading of Article 127 of the Cooperative Code confirms that Section 39 of PD No. 269 remains effective; hence, the income tax exemption of electric cooperatives continues to apply.

The Court's ruling in *Misamis Oriental Rural Electric Service Cooperative I, Inc. v. Commissioner of Internal Revenue*[62] is likewise instructive:

> *Petitioner is exempt from income tax, so the assessment against it is void*
>
> Petitioner's other major argument is that it is permanently exempted from income tax. Respondent disagrees, quoting RMC No. 74-2013 and the jurisprudence cited by said circular.
>
> We find for petitioner.

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[62] CTA Case No. 10206, July 16, 2024 [Per J. Modesto-San Pedro, Second Division].

Under Section 39 of P.D. No. 269, a law issued on August 6, 1973, cooperatives registered with the National Electrification Administration ("NEA") are permanently exempted from paying income taxes:

. . . .

This was later withdrawn by Executive Order ("E.O.") No. 93 on December 17, 1986:

> 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. . .

Then, Fiscal Incentive Review Board ("FIRB") Resolution No. 24-87, effective July 1, 1987, restored all tax exemptions granted by P.D. No. 269 except that on income tax:

> 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, ...), 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: ... .

Finally, R.A. No. 6938 ("Cooperative Code") reinstated tax exemptions for cooperatives registered with the Cooperative Development Authority ("CDA").

The controversy arises mainly from the laws discussed. For petitioner, the permanent exemption granted to it by P.D. No. 269 persists to the present. For respondent, said exemption was withdrawn by E.O. No. 93 and not reinstated by FIRB Resolution No. 24-87, which left the income of cooperatives taxable. Further, tax exemptions under the Cooperative Code are granted only to cooperatives registered with the CDA, which petitioner is not.

Unfortunately for respondent, this Court has previously and consistently favored cooperatives when ruling on this issue. The case of *Samar-I Electric Cooperative, Inc. v. Commissioner of Internal Revenue ("Samar-I")* is informative here. There, the Court found an electric cooperative exempt from Minimum Corporate Income Tax under P.D. No. 269,

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even in the face of E.O. No. 93 and FIRB Resolution No. 24-87 and despite said cooperative not being registered with the CDA under the Cooperative Code. The ruling was reached via two conclusions: (1) registration with the CDA was optional for cooperatives already registered with the NEA; and (2) E.O. No. 93 is inconsistent with the Cooperative Code, which thus repealed the former.

The first conclusion was drawn from Rule III, Section 1 of the Omnibus Rules and Regulations on the Registration of Electric Cooperatives ("Omnibus Rules"), which uses the phrase "shall choose" when discussing registration with the CDA by already existing electric cooperatives. The Court then reasoned that 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 P.D. No. 269, not the Cooperative Code.

The second conclusion was made following Article 127 of the Cooperative Code:

> ARTICLE 127. Repeals. — Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provisions of this Code shall be deemed repealed: Provided, however, That nothing in this Code shall be interpreted to mean the amendment of repeal of any provision of Presidential Decree No. 269: Provided, further, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof.

The above repealed all previous laws inconsistent with the Cooperative Code while leaving P.D. No. 269 untouched. The Court in Samar-I found that E.O. No. 93 was "apparently" inconsistent with the Cooperative Code and thus deemed the former's withdrawal of tax exemptions repealed by the latter.

Combining these two conclusions, the Court in *Samar-I* found that therein petitioner still enjoyed the exemption from income tax granted by P.D. No. 269 even without registering with the CDA. The ruling has been reaffirmed by the Court multiple times, such as in the recent case of *Agusan del Norte Electric Cooperative, Inc. v. Commissioner of Internal Revenue.*

We follow this line of reasoning here. While the bodies with which cooperatives must register differ, P.D. No. 269 and the Cooperative Code share a similar principle: to grant tax exemptions to registered cooperatives. E.O. No. 93 contradicts this by withdrawing such tax exemptions. The Cooperative Code thus repeals said Order while refraining from modifying

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> P.D. No. 269. By extension, the Cooperative Code also repeals FIRB Resolution No. 24-87, insofar as said Resolution reiterates E.O. No. 93's withdrawal of income tax exemptions for cooperatives. As such, the Code effectively reinstates the tax exemptions granted by P.D. No. 269 to electric cooperatives that had registered with the NEA, without further requiring them to register with the CDA.
>
> . . . .
>
> From the above, none of the jurisprudence invoked by respondent is fully applicable here. We thus follow the past rulings of the Court of Tax Appeals and find petitioner exempt from income tax.
>
> 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.

In the instant case, BUSECO has sufficiently established its entitlement to the income tax exemption under PD No. 269. Both the BIR and BUSECO admitted that the latter is registered with and is a franchise grantee of the NEA,[63] granting BUSECO the authority to operate an electric light and power service for a period of fifty (50) years from June 10, 1981.

Accordingly, BUSECO's status as a non-stock, non-profit electric cooperative duly franchised by the NEA entitles BUSECO to the income tax exemption provided under Section 39 of PD No. 269.

The CIR's right to assess BUSECO has partially prescribed.

The BIR's power to **assess** taxes provided under Section 2 of the NIRC of 1997, as amended,[64] is limited by Section 203,[65]

[63] Division Docket (CTA Case No. 9761) — Vol. 1, p. 10, Petition for Review, The Parties, par. 1 *vis-à-vis* Division Docket (CTA Case No. 9761) — Vol. 1, p. 277, Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts, par. 1; Division Docket (CTA Case No. 9819), p. 10, Petition for Review, The Parties, par. 1 *vis-à-vis* Division Docket (CTA Case No. 9761) — Vol. 1, p. 359, JSFI, Summary of Admitted Facts, par. 1.

[64] SEC. 2. Powers and Duties of the Bureau of Internal Revenue. - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance, and its **powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. (Emphasis supplied)

[65] SEC. 203. Period of Limitation Upon Assessment and Collection. - **Except as provided in Section 222**, internal revenue taxes shall be assessed **within three (3) years** after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of

which provides for *three (3) years*, counted from the due date or date of actual filing of the returns, whichever is earlier. Hence, any assessments made after the expiration of such period is no longer valid and effective.

As an exception, Section 222 of the NIRC of 1997, as amended, allows the extension of the assessment period beyond the original 3-year prescriptive period.[66] Section 222(a) provides for a 10-year prescriptive period for the CIR to assess in cases of a *false or fraudulent return with intent to evade tax* or *failure to file a return*, while Section 222(b) authorizes the extension of 3 years upon executing a *valid waiver*.

Accordingly, the Court *En Banc* makes its determination as to whether the CIR's right to assess has already prescribed.

First, the Court *En Banc* determines which prescriptive period is applicable. To resolve this, the Court *En Banc* finds the case of *McDonald's* highly instructive, *viz.:*

> *F. Summary:* ***Conditions*** *for a Valid Extension of Assessment Period in Case of a False Return*
>
> *i.* ***Requisites*** *under Section 222 (a) of the 1997 Tax Code*
>
> - *General Rule — Proof of False or Fraudulent Return*
>
> Pursuant to Section 222 (a) of the 1997 Tax Code, the extraordinary 10-year assessment period may apply in case the taxpayer: (1) filed a false return, (2) filed a fraudulent return, or (3) failed to file a return.

such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (Emphasis supplied)

66 SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

A fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due," while a false return simply "implies deviation from the truth, whether intentional or not."

It must be stressed, however, that a false return within the meaning of Section 222 (a) does not refer to false returns in general. To be sure, the extraordinary 10-year assessment period applies to a *false return* when:

> (1) the return contains an error or misstatement, and
> (2) **such error or misstatement was *deliberate or willful.***

... ...

It shall be the CIR's burden to establish the existence of the above-enumerated statutory requisites with ***clear and convincing evidence.***

- *Exception — Prima Facie Evidence of a False or Fraudulent Return (30% Threshold)*

The **CIR may be relieved from the above-mentioned burden of proof when there is *prima facie evidence of falsity or fraud,*** as defined under Section 248 (B) of the 1997 Tax Code.

> (1) The CIR ascertains that there is a *misstatement/misdeclaration* in the return, in particular,
>
> > (a) an *understatement/under declaration* of sales, receipts, or income or
> >
> > (b) an *overstatement/over declaration* of expenses or other deductions, and
>
> (2) the misstatement is *substantial,* such that exceeds the corresponding amount declared in the return by 30%.

30% threshold satisfied. There is *prima facie* evidence of falsity or fraud, and the burden of proof shifts to the taxpayer. If the taxpayer fails to overcome the presumption, the *prima facie* evidence shall be sufficient to justify the application of the 10-year period.

Taxpayer refutes presumption. If the taxpayer is successful in overturning the presumption (*e.g.,* demonstrating that the misstatement as ascertained by the

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> CIR had been inadvertent or attributable to a mistake or was not deliberate or willful on the part of the taxpayer), the CIR cannot rely on the presumption in proving the taxpayer's *intent to evade.*
>
> *ii.* ***<u>Due Process Requirements</u>***
>
> (1) First Due Process Requirement. The *assessment notice* issued to the taxpayer must clearly state the following:
>
> (a) that extraordinary prescriptive period (not the basic three-year period) is being applied, and
>
> (b) the bases of allegations of falsity or fraud, *e.g.*, if the CIR seeks to rely on the *presumption of falsity or fraud* particularly, the formal notice to the taxpayer *must set out the computation by which it ascertained that the misdeclaration in the return surpassed the 30% threshold.*
>
> (2) Second Due Process Requirement. The tax authorities have not acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied. (Emphasis supplied)

As established in the *McDonald's* case, the application of the extraordinary period of prescription is subject to the fulfillment of the ***requisites*** under Section 222 (a) of the NIRC of 1997, as amended, and compliance with the ***due process requirements.***

As regards the ***first*** due process requirement - that the assessment notice must state that the extraordinary prescriptive period is being applied, along with the basis for the allegations of falsity or fraud – the Court *En Banc* notes that nowhere in the FAN/FLD did the CIR apply the extraordinary prescriptive period.

Accordingly, the ordinary prescriptive period of three (3) years is applicable.

First, the instant case involves the following taxes and the following deadlines:

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Tax	Deadlines
Income tax	15th day of the 4th month following the close of the taxable year[67]
Value-added tax (VAT)	25 days following the close of each quarter[68]
Expanded withholding tax (EWT)	10th day of the following month[69]

Second, under Section 203, the three-year period for assessment is reckoned from the date of actual filing or the deadline, whichever is later.[70]

Accordingly, the deadlines for the CIR to assess BUSECO are as follows:

Tax Type	Due date	Actual filing[71]	Last day to assess
Income tax, 2014	**April 15, 2015**	**April 15, 2015**	**April 15, 2018**
VAT, 2014 Q1	April 25, 2014	April 25, 2014	April 25, 2017
VAT, 2014 Q2	July 25, 2014	July 25, 2014	July 25, 2017
VAT, 2014 Q3	October 27, 2014	October 27, 2014	October 27, 2017
VAT, 2014 Q4	**January 26, 2015**	**January 23, 2015**	**January 26, 2018**
EWT, January 2014	February 10, 2014	February 10, 2014	February 10, 2017
EWT, February 2014	March 10, 2014	March 10, 2014	March 10, 2017
EWT, March 2014	April 10, 2014	April 10, 2014	April 10, 2017
EWT, April 2014	May 12, 2014	May 9, 2014	May 12, 2017
EWT, May 2014	June 10, 2014	June 10, 2014	June 10, 2017
EWT, June 2014	July 10, 2014	July 10, 2014	July 10, 2017
EWT, July 2014	August 11, 2014	August 8, 2014	August 11, 2017
EWT, August 2014	September 10, 2014	September 10, 2014	September 10, 2017
EWT, September 2014	October 10, 2014	October 10, 2014	October 10, 2017
EWT, October 2014	November 10, 2014	November 10, 2014	November 10, 2017
EWT, November 2014	December 10, 2014	December 10, 2014	December 10, 2017
EWT, December 2014	**January 12, 2015**	**January 12, 2015**	**January 12, 2018**

Third, an assessment is deemed made only on the date the assessment notice was released, mailed, or sent to the taxpayer.[72] Furthermore, it is clear that the assessment contemplated in Sections 203 and 222 of the NIRC of 1997, as amended, refers to the service of the FAN upon the taxpayer.[73]

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67 Section 77(B), NIRC of 1997, as amended.
68 Section 114(A), NIRC of 1997, as amended.
69 Section 2.58(A)(2)(a), RR No. 2-1998.
70 Section 203, NIRC of 1997, as amended.
71 Although the returns were formally offered by BUSECO and were denied admission, the same returns can be found in the BIR Records formally offered by the CIR and admitted by the Court.
72 *Commissioner of Internal Revenue v. Pascor Realty & Development Corp.*, G.R. No. 128315, June 29, 1999 [Per J. Panganiban, Third Division].
73 *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017 [Per J. Leonen, Third Division].

The subject FAN/FLD was issued only on **December 27, 2017**. Accordingly, prescription has already set in for the deficiency VAT assessment covering the first to third quarters of TY 2014 and the deficiency EWT assessment for January to November 2014.

Considering the nullification of the deficiency income tax assessment due to BUSECO's statutory exemption, the Court *En Banc* will only further examine the **deficiency VAT assessment for the fourth quarter of TY 2014** and the **deficiency EWT assessment for December 2014**.

Deficiency VAT for the 4th quarter of taxable year 2014

The CIR assessed BUSECO for deficiency VAT for TY 2014 in the total amount of ₱8,482,830.31, inclusive of interest and compromise penalty, computed as follows:[74]

Gross Sales per Return		₱ 234,060,266.17
Add: Undeclared VATable Sales per AIETID		3,186,008.25
Total Adjusted Sales		**₱237,246,274.42**
Output Tax Due		₱ 28,469,552.93
Less: Creditable Input Tax Allowed		
Input Tax on Goods per SLP	₱2,499,527.45	
Input Tax on Services per SLP	1,227,066.11	
Input Tax on Capital Goods	15,890,463.56	19,617,057.12
VAT Due		₱ 8,852,495.81
Less: Allowable Payments		
Monthly and Quarterly VAT Payments	₱3,303,115.04	
Tax Credits per BIR Form 2306	216,957.52	3,520,072.56
VAT Deficiency		₱ 5,332,423.25
Add: Interest @ 20% p.a. (1/26/2015 to 12/31/2017)	₱3,126,407.06	
Compromise Penalty for Non-submission of SLP	24,000.00	3,150,407.06
Total VAT Due and Payable		**₱ 8,482,830.31**

a) Undeclared VATable Sales per AIETID - ₱3,186,008.25

As shown in the foregoing computation, the CIR assessed BUSECO for undeclared VATable sales per AIETID amounting to ₱3,186,008.25. As stated in the Details of Discrepancies attached to the FLD,[75] the assessment stemmed from the VAT

[74] Details of Computation, Exhibit "R-12", BIR Records (Exhibit "R-26"), p. 721.
[75] Exhibit "R-12". BIR Records (Exhibit "R-26), p. 719.

refund claim filed by Lapanday Diversified Products Corporation (Lapanday), which included an input VAT claim of ₱382,320.99 corresponding to purchases from BUSECO amounting to ₱3,186,008.25.

According to the CIR, Lapanday was able to substantiate the validity of its purchases in accordance with the invoicing and accounting requirements for VAT registered taxpayers under Section 113, in relation to Section 110, of the NIRC, as amended.

However, based on the pre-processed data generated through the BIR's Reconciliation of Listings for Enforcement (RELIEF) System, the CIR found that the said purchases were not reflected in BUSECO's reported sales. Consequently, the CIR treated the transactions as undeclared sales and subjected them to 12% VAT.[76]

Based on the BIR records, the purchases reported by Lapanday, and the corresponding input VAT claimed thereon, amounting to ₱3,186,008.82[77] and ₱382,320.99, respectively, are summarized as follows:[78]

REGISTERED NAME OF SUPPLIER	OR Number	OR DATE	NET TAXABLE	INPUT VAT	INVOICE AMOUNT
BUKIDNON 11 ELECTRIC COOPERATIVE INC	681267	*None*	₱ 4,809.75	₱ 577.17	₱ 5,386.92
BUKIDNON ELECTRIC COOP	4710371	01/25/2014	656.67	78.80	735.47
BUKIDNON ELECTRIC COOP	4572034	01/28/2014	240,307.92	28,836.95	269,144.87
BUKIDNON ELECTRIC COOP	680608	01/28/2014	5,192.08	623.05	5,815.13
BUKIDNON 11 ELECTRIC COOPERATIVE INC	4610527	02/14/2014	605.50	72.66	678.16
BUKIDNON ELECTRIC COOP	4621502	02/20/2014	608.92	73.07	681.99
BUKIDNON 11 ELECTRIC COOPERATIVE INC	4657814	02/28/2014	272,744.25	32,729.31	305,473.56
BUKIDNON 11 ELECTRIC COOPERATIVE INC	681609	02/28/2014	6,534.25	784.11	7,318.36
BUKIDNON 11 ELECTRIC COOPERATIVE INC	4776742	03/21/2014	535.50	64.26	599.76
BUKIDNON 11 ELECTRIC COOPERATIVE INC	681631	03/28/2014	6,194.58	743.35	6,937.93
BUKIDNON 11 ELECTRIC COOPERATIVE INC	4789788	03/28/2014	305,622.25	36,674.67	342,296.92
BUKIDNON ELECTRIC COOP	4844540	04/22/2014	588.00	70.56	658.56
BUKIDNON 11 ELECTRIC COOPERATIVE INC	682131	04/30/2014	6,590.42	790.85	7,381.27

[76] Exhibit "R-7", BIR Records (Exhibit "R-26"), pp. 598-599.
[77] With very minimal discrepancy of ₱.57 compared to the assessed amount of ₱3,186,008.25.
[78] Exhibit "R-7", BIR Records (Exhibit "R-26"), p. 598.

BUKIDNON 11 ELECTRIC COOPERATIVE INC	4886536	04/30/2014	292,670.33	35,120.44	327,790.77
BUKIDNON ELECTRIC COOP	4897856	05/19/2014	591.58	70.99	662.57
BUKIDNON ELECTRIC COOP	4962896	05/28/2014	329,659.08	39,559.09	369,218.17
BUKIDNON ELECTRIC COOP	6822247	05/28/2014	7,122.00	854.64	7,976.64
BUKIDNON ELECTRIC COOP	5003385	06/20/2014	572.83	68.74	641.57
BUKIDNON ELECTRIC COOP	682486	07/02/2014	6,218.67	746.24	6,964.91
BUKIDNON ELECTRIC COOP	5089453	07/21/2014	525.83	63.03	588.86
BUKIDNON ELECTRIC COOP	5119590	07/28/2014	249,863.17	29,983.58	279,846.75
BUKIDNON ELECTRIC COOP	683259	07/28/2014	5,594.42	671.33	6,265.75
BUKIDNON ELECTRIC COOP	5213243	08/20/2014	439.25	52.71	491.96
BUKIDNON ELECTRIC COOP	5210842	08/27/2014	203,932.50	24,471.90	228,404.40
BUKIDNON ELECTRIC COOP	683518	08/27/2014	4,961.50	595.38	5,556.88
BUKIDNON ELECTRIC COOP	5282657	09/18/2014	373.75	44.85	418.60
BUKIDNON ELECTRIC COOP	5322292	09/26/2014	232,745.33	27,929.44	260,674.77
BUKIDNON ELECTRIC COOP	683643	10/01/2014	5,789.33	694.72	6,484.05
BUKIDNON ELECTRIC COOP	5406485	10/28/2014	285,865.33	34,303.84	320,169.17
BUKIDNON ELECTRIC COOP	684867	10/28/2014	5,834.33	700.12	6,534.45
BUKIDNON ELECTRIC COOP	5453141	11/26/2014	339,040.67	40,684.88	379,725.55
BUKIDNON ELECTRIC COOP	685484	11/26/2014	5,781.25	693.75	6,475.00
BUKIDNON ELECTRIC COOP	685713	12/11/2014	350,491.58	42,058.99	392,550.57
BUKIDNON ELECTRIC COOP	685613	12/17/2014	6,946.00	833.52	7,779.52
TOTAL			**₱3,186,008.82**	**₱ 382,320.99**	**₱3,568,329.81**

BUSECO contends that its receipts from Lapanday were duly reported and declared in its VAT returns and were already subjected to output VAT. Thus, BUSECO argues that the CIR's inclusion of the same transactions as undeclared sales would effectively result in the imposition of VAT twice on a single transaction. BUSECO further argues that the CIR erred in concluding that, because Lapanday reported purchases from BUSECO, the corresponding amounts should automatically be added to BUSECO's taxable sales on the assumption that such sales had not been reported.[79]

The Court *En Banc* partially upholds the assessment.

[79] Division Docket (CTA Case No. 9819), p. 17, Petition for Review.

Although BUSECO submitted its *Summary of Output VAT–Distribution and Others* for each month of taxable year 2014, purportedly showing the breakdown of the output VAT reported in its *Monthly Value-Added Tax Declarations* and *Quarterly Value-Added Tax Returns,*[80] the documents do not identify the customers involved nor indicate the corresponding official receipt numbers. Absent such information, the Court is unable to verify BUSECO's claim that its transactions with Lapanday were included in its reported VATable sales.

Accordingly, BUSECO failed to substantiate its assertion that the subject sales had already been declared for VAT purposes. The assessment is therefore sustained.

However, considering that the CIR's right to assess deficiency VAT for the first, second, and third quarters of taxable year 2014 had already prescribed, the assessed undeclared sales should be reduced to ₱999,748.49, pertaining to the transactions falling within the fourth quarter of 2014, as follows:

REGISTERED NAME OF SUPPLIER	OR Number	OR DATE	NET TAXABLE	INPUT VAT	INVOICE AMOUNT
BUKIDNON ELECTRIC COOP	683643	10/01/2014	₱ 5,789.33	₱ 694.72	₱ 6,484.05
BUKIDNON ELECTRIC COOP	5406485	10/28/2014	285,865.33	34,303.84	320,169.17
BUKIDNON ELECTRIC COOP	684867	10/28/2014	5,834.33	700.12	6,534.45
BUKIDNON ELECTRIC COOP	5453141	11/26/2014	339,040.67	40,684.88	379,725.55
BUKIDNON ELECTRIC COOP	685484	11/26/2014	5,781.25	693.75	6,475.00
BUKIDNON ELECTRIC COOP	685713	12/11/2014	350,491.58	42,058.99	392,550.57
BUKIDNON ELECTRIC COOP	685613	12/17/2014	6,946.00	833.52	7,779.52
			₱999,748.49	**₱ 119,969.82**	**₱1,119,718.31**

b) Creditable Input Tax Allowed - ₱19,617,057.12

In computing the deficiency VAT assessment, the CIR deducted creditable input tax in the amount of ₱19,617,057.12 from the output tax due of ₱28,469,552.93. However, the Court notes that the said creditable input tax exceeds by ₱55,526.03 the amount reflected in BUSECO's 2014 quarterly VAT returns, which show total creditable input tax of only ₱19,561,531.09,[81]

[80] Annex P-14 VAT Returns, USB (Exhibit "P-19").
[81] Annex P-17, USB (Exhibit "P-19").

as summarized by the Court-commissioned Independent Certified Public Accountant (ICPA).

Accordingly, for purposes of determining BUSECO's deficiency VAT for the fourth quarter of 2014, the Court shall recognize only the creditable input VAT reported in BUSECO's 2014 quarterly VAT returns in the amount of ₱19,561,531.09.

c) Tax Credits per BIR Form 2306 - ₱216,957.52

BUSECO argues that, based on the Details of Computation, the CIR allowed only ₱216,957.52 of the total claimed tax credit of ₱5,221,268.49.

Taxable Year 2014	Creditable VAT Withheld Per VAT Return[82]
1st Quarter	₱ 1,133,444.93
2nd Quarter	1,302,834.98
3rd Quarter	1,237,031.86
4th Quarter	1,547,956.72
Total	**₱ 5,221,268.49**

BUSECO explains that the claimed creditable withholding VAT arose from the VAT withheld by national and local government units from payments of their electricity bills. According to BUSECO, these government entities withheld the VAT and issued BIR Forms No. 2306 as proof of such withholding.

BUSECO further contends that the CIR failed to explain the basis for the disallowance of the remaining claimed tax credits, including the factual findings, applicable laws, and regulations supporting such determination. BUSECO maintains that this omission constitutes a violation of its right to due process.[83]

The Court *En Banc* agrees with BUSECO.

Section 228 of the NIRC of 1997, provides, among others, that "the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the

[82] Annex P-14 VAT Returns, USB (Exhibit "P-19").
[83] Division Docket (CTA Case No. 9819), p. 19, Petition for Review.

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assessment shall be void". This requirement is consistent with the constitutional guarantee of due process under the 1987 Philippine Constitution, which states that "No person shall be deprived of life, liberty, or property without due process of law." Thus, a taxpayer must be adequately informed of the factual and legal bases of an assessment in order to enable it to properly contest the same and present supporting evidence.

As correctly pointed out by BUSECO, the CIR only allowed the amount of ₱216,957.52 of the total claimed tax credits of ₱5,221,268.49, thereby effectively disallowing the remaining claimed tax credits of ₱5,004,310.98. However, the CIR failed to indicate the basis in the Details of Discrepancies the factual and legal bases for such disallowance.

The CIR's failure to provide the factual and legal grounds for the disallowance deprived BUSECO of due process, as the latter was not properly apprised of the issues it needed to address or refute. Accordingly, pursuant to Section 228 of the NIRC of 1997, as amended, this item of assessment is void.

d) Compromise Penalty - ₱24,000.00

As shown in the subject assessment, BUSECO was assessed with compromise penalty in the amount of ₱24,000.00 for non-submission of Summary List of Sales and Purchases (SLSP), citing as basis thereof Revenue Memorandum Order (RMO) No. 19-2007.

The Court *En Banc* cancels the assessment.

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the NIRC of 1997, as amended.[84] Under RMO No. 19-2007, a compromise penalty is only an amount 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 belongs to the

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[84] *The Philippines International Fair, Inc. v. Collector of Internal Revenue*, G.R. Nos. L-12928 & L-12932, March 31, 1962 [Per J. Dizon, *En Banc*]).

taxpayer.[85] Absent a showing that BUSECO 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.[86]

In sum, BUSECO is liable for basic deficiency VAT for the fourth quarter of taxable year 2014 in the amount of ₱119,969.82, computed as follows:

VATable Sales/Receipts Per VAT Return – 4th Qtr 2014[87]	₱ 64,348,851.42
Add: Undeclared VATable Sales/Receipts	999,748.49
Adjusted VATable Sales/Receipts	**₱65,348,599.91**
Output Tax Due	₱ 7,841,831.99
Less: Creditable Input Tax per VAT Return – 4th Qtr 2014[88]	
Input Tax on Goods	₱ 592,516.16
Input Tax on Services	411,393.20
Input Tax on Capital Goods	4,327,516.10
Total Creditable Input Tax	₱ 5,331,425.46
Net VAT Payable	₱ 2,510,406.53
Less: Tax Credits/Payments per VAT Return – 4th Qtr 2014[89]	
Monthly VAT Payments	₱ 842,479.99
Tax Credits per BIR Form 2306	1,547,956.72
Total Tax Credits/Payments	₱ 2,390,436.71
Basic Deficiency VAT	**₱ 119,969.82**

Deficiency EWT for December 2014

The CIR found that BUSECO's claimed rental expense in the amount of ₱851,344.00 and professional fees in the amount of ₱2,100,375.60.00 were not subjected to 5% and 15% EWT, respectively. Invoking RR No. 2-98,[90] the CIR assessed BUSECO for deficiency EWT for taxable year 2014 in the total amount of ₱336,636.78, inclusive of interest, as shown below:[91]

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[85] *Id.*
[86] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc.*, G.R. No. L-35266, January 21, 1991 [Per J. Narvasa, First Division].
[87] Annex P-14 VAT Returns, USB (Exhibit "P-19").
[88] Annex P-14 VAT Returns, USB (Exhibit "P-19").
[89] Annex P-14 VAT Returns, USB (Exhibit "P-19").
[90] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.
[91] Details of Computation, Exhibit "R-12", BIR Records (Exhibit "R-26"), p. 720.

Rental Expense	₱ 851,344.00	5%	₱ 42,567.20
Professional Fee	2,100,375.60.00	15%	315,056.34
Total Expanded Withholding Tax Due			₱ 357,623.54
Less: EWT Payments			146,139.16
Expanded Withholding Tax Deficiency			₱ 211,484.38
Add: Interest @ 20% p.a.			125,152.40
Total Expanded Withholding Tax Due and Payable			**₱336,636.78**

The Court *En Banc* partially sustains the assessment.

a) Rental Expense - ₱851,344.00

Section 2.57.2(C) of RR No. 2-98, as amended by RR Nos. 14-2002[92] and 17-2003[93] requires the withholding of five percent (5%) EWT on certain rental payments as follows:

> **Sec. 2.57.2. *Income payments subject to creditable withholding tax and rates prescribed thereon*.** — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> . . . .
>
> **(C) Rentals**
>
> (1) **Real properties**. — On gross rental for the continued use or possession of real property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity — Five percent (5%);
>
> (2) **Personal properties**. — On gross rental or lease in excess of Ten Thousand Pesos (P10,000.00) annually for the continued use or possession of personal property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity, except those under financial lease arrangements with leasing and finance companies authorized to operate under Republic Act No. 8556 (Financing Company Act of 1998). — Five percent (5%)

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[92] SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended.
[93] SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes.

(3) **Poles, satellites and transmission facilities.** – On gross rentals or lease for the use of poles, satellites and/or transponder and transmission facilities which include but not limited to the following: switchboards, land lines/aerial cables, underground cables and submarine cables – Five percent (5%);

(4) **Billboards** – On gross rentals or lease of spaces used in posting advertisements in the form of billboards and/or structures similar thereto, posted in public places such as, but not limited to, buildings, vehicles, amusement places, malls, street posts, etc. – Five percent (5%).

BUSECO submitted a breakdown of the ₱851,344.00 rental expense claimed as a deduction from its taxable gross income for taxable year 2014[94] as follows:[95]

Transaction Date	Reference	Comments	Amount	Remarks
01/31/2014	APV#0014117	GOLDSTAR OFFICE MACHINE A	₱ 4,974.78	COPIER RENTAL-MAR-MAY2013
	APV#0014216	MORESCO-1	70,000.00	JANUARY-5MVA RENTAL
	JV#0007666		1,000.00	EXPS-OTHER PREPYTS-JAN14
02/10/2014	APV#0014214	BLASTER PRO AUDIO SERVICE	63,000.00	FULL PAYMENT-LED RENTAL
02/26/2014	APV#0014257	GOLDSTAR OFFICE MACHINE A	5,239.96	COPIER RENTAL-JAN-FEB
02/28/2014	APV#0014320	MORESCO-1	70,000.00	FEBRUARY-5MVA-RENTAL
	JV#0007765		1,000.00	PREPYMNTS-OTHERS-FEB14
03/27/2014	APV#0014418	GOLDSTAR OFFICE MACHINE A	1,887.72	RENTAL COPIER-7FEB-7MAR
03/31/2014	JV#0007758		1,000.00	PREPAID EXP-LABORES-MAR14
04/30/2014	APV#0014660	GOLDSTAR OFFICE MACHINE A	2,456.91	COPIER RENTAL-7-MAR-14APR
	JV#0007949		1,000.00	PREPAID EXP-APR14LABORES
	JV#0007972	M&M TOY BALLOONS & PARTY	6,500.00	LIQ-CA147CV33022RENTCHAIR
05/28/2014	APV#0014786	GOLDSTAR OFFICE MACHINE A	2,218.53	COPIER RENTAL-11APR-9-MAY
05/31/2014	JV#0008024	M&M TOY BALLOONS & PARTY	700.00	LIQ-CV33781CHAIR RENT-ERC
	JV#0008082		1,000.00	PREPAID EXP-MAY14LABORES
	APV#0014976	GOLDSTAR OFFICE MACHINE A	2,874.11	COPIER RENTAL-9MAY-6JUNE
	JV#0008159		1,000.00	PREPAID EXP-LABORES-JUN14
	APV#0015221	GOLDSTAR OFFICE MACHINE A	1,627.90	COPIER RENTAL-JUNE-JULY
	JV#0008238		1,000.00	PREPAID EXPS-JUL14LABORES
	APV#0015323	CASTRO FRANCISCO	5,000.00	HOUSE RENTAL-NEA AUDIT

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[94] BIR Records (Exhibit "R-26"), p. 492.
[95] BIR Records (Exhibit "R-26"), p. 681.

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	APV#0015380	GOLDSTAR OFFICE MACHINE A	2,605.58	COPIER RENTAL-JULY-AUGUST
	JV#0008372		1,000.00	PREPAID EXP-OTHERS-AUG14
	APV#0015625	MORESCO-1	350,000.00	RENTAL-5MVA-MAY-SEPT2014
	JV#0008504		1,000.00	PREPAID EXP-SEP14LABORES
10/31/2014	APV#0015846	LUMICTIN HERMEGINO	7,500.00	HOUSE RENTAL - SEPTEMBER
	APV#0015911	MORESCO-1	70,000.00	RENT-TRANSFORMER-OCTOBER
	APV#0015911	MORESCO-1	70,000.00	RENT-TRANSFORMER-NOVEMBER
	APV#0015912	GOLDSTAR OFFICE MACHINE A	6,604.02	RENT-PHOTOCOPIER-AUG-SEPT
	JV#0008602		1,000.00	PREPAID EXP-LABORES-OCT14
11/28/2014	APV#0016190	LUMICTIN HERMEGINO	15,000.00	HOUSE RENTAL-OCT-NOV.2014
	APV#0016213	GOLDSTAR OFFICE MACHINE A	780.80	COPIER RENTAL-3OCT-7NOV
11/30/2014	JV#0008751		1,000.00	PREPAID EXP-NOV2013OTHRS
12/29/2014	APV#0016448	GOLDSTAR OFFICE MACHINE A	1,268.97	RENTAL-PHOTOCOPIER-NOV-DE
	APV#0016452	GOLDSTAR OFFICE MACHINE A	1,605.13	RENTAL-PHOTOCOP-DEC-JAN
	APV#0016486	MORESCO-1	70,000.00	5MVA-RENTAL-DECEMBER
12/31/2014	JV#0008872		1,000.00	PREPAID EXP-DEC14LABORES
	JV#0008969		7,500.00	HOUSE RENTAL-LUMICTIN,H
			₱ 851,344.41	

BUSECO contends that the amounts recorded under rental expense largely pertain to the use of motor vehicles by its meter readers and to machinery and equipment utilized by its maintenance personnel in the upkeep of BUSECO's overhead lines. According to BUSECO, rather than acquiring new motor vehicles, it leases the personal motor vehicles of its meter readers for operational use. Similarly, BUSECO allegedly leases the personal machinery and equipment of its maintenance personnel. BUSECO further asserts that the rental payments made for each motor vehicle, machinery, or equipment did not exceed the annual threshold of ₱10,000.00 prescribed under RR 17-2003.[96]

The Court *En Banc* is not persuaded.

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[96] Division Docket (CTA Case No. 9819), p. 19, Petition for Review.

Aside from its bare assertions, BUSECO failed to present competent documentary evidence establishing the nature of the subject transactions, the identity of the payees, the specific properties leased, or the amount of rental payments attributable to each lessor. In the absence of such evidence, the Court cannot verify whether the payments fall within the exclusions claimed by BUSECO or determine their proper tax treatment.

Considering that the entire amount of ₱851,344.41 was claimed as rental expense in 2014 and in the absence of proof that the same represents amortization of payment already made in previous year, CIR's imposition of 5% EWT thereon is hereby sustained pursuant to Section 2.57.4 of RR No. 2-98, as amended by RR No. 12-2001,[97] which provides for the timing of withholding, to wit:

> Sec. 2.57.4. *Time of withholding.* - The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations arises at the time an income payment is paid or payable, *or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first.* The term "payable" refers to the date the obligation becomes due, demandable or legally enforceable.
>
> *Provided, however, that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes.*

Nonetheless, the Court *En Banc* notes that the assessment has already prescribed with respect to transactions covering the period from January to November 2014. Consequently, only the rental expenses pertaining to December 2014 may be considered in computing the deficiency EWT.

The records show that BUSECO claimed the following rental expenses for December 2014:

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[97] SUBJECT: Amendment to the Pertinent Provisions of Revenue Regulations No. 1-98, as Amended, Revenue Regulations No. 2-98, as Amended, and Revenue Regulations No. 6-2001, Relative to the Revision of Withholding Tax Rates on Certain Income Payments Subject to Withholding Tax, the Deferment of the New Deadline Dates For Filing Selected Tax Returns, the Reporting Requirements for Recipients of Talent Fees, and for Other Purposes.

Transaction Date	Reference	Comments	Amount	Remarks
12/29/2014	APV#0016448	GOLDSTAR OFFICE MACHINE A	₱ 1,268.97	RENTAL-PHOTOCOPIER-NOV-DE
	APV#0016452	GOLDSTAR OFFICE MACHINE A	1,605.13	RENTAL-PHOTOCOP-DEC-JAN
	APV#0016486	MORESCO-1	70,000.00	5MVA-RENTAL-DECEMBER
12/31/2014	JV#0008872		1,000.00	PREPAID EXP-DEC14LABORES
	JV#0008969		7,500.00	HOUSE RENTAL-LUMICTIN,H
Total claimed rental expense for December 2014			**₱81,374.10**	
Basic deficiency 5% EWT			**₱ 4,068.71**	

Accordingly, the assessment for basic deficiency 5% EWT on rental expenses is reduced to ₱4,068.71, representing the 5% withholding tax due on the rental expenses attributable to December 2014.

b) Professional Fees - ₱2,100,375.60

Under Section 2.57.2(A) and (B) of RR No. 2-98, as amended by RR Nos. 30-2003[98] and 10-2013,[99] professional fees are subject to either 10% or 15% EWT, depending on the amount of gross income earned by the payee during the taxable year, thus:

> ***Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon.*** — ...
>
> **(A) Professional fees, talent fees, etc., for services rendered by individuals**. — On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals — Fifteen percent (15%), if the gross income for the current year exceeds P720,000; and Ten percent (10%), if otherwise;
>
> (1) Those individually engaged in the practice of professions or callings; lawyers; certified public accountants; doctors of medicine; architects; civil, electrical, chemical, mechanical, structural, industrial, mining, sanitary, metallurgical and geodetic engineers; marine surveyors; doctors of veterinary science; dentists; professional appraisers;

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[98] SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Last Amended by Revenue Regulations No. 17-2003, and Revenue Regulations No. 8-98, as Amended, Providing for the Imposition of Final Withholding Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets by Non-resident Aliens, Increasing the Withholding Tax Rates on Certain Income Payments, Inclusion of Certain Income Payments, Sanctions to be Imposed on Payees Who Refuse the Withholding of Tax on Their Income/Receipts, and for Other Purposes.

[99] SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations (RR) No. 2-98, as Last Amended by Revenue Regulations No. 30-2003, Providing for the Inclusion of Real Estate Service Practitioners (i. e. Real Estate consultant, Appraiser and Broker) Who Passed the Licensure Examination given by the Real Estate Service under the Professional Regulations Commission as defined in Republic Act No. 9646, "The Real Estate Service Act of the Philippines" as Among Those Professionals Falling Under Section 2.57.2(A)(1) of RR 2-98, as Amended, and RR 14-2002 as Regards Income Payments to Certain Brokers and Agents.

connoisseurs of tobacco; actuaries; interior decorators, designers, real estate service practitioners (RESPs), (i.e., real estate consultants, real estate appraisers and real estate brokers) requiring government insurance licensure examination given by the Real Estate Service pursuant to Republic Act No. 9646 and all other professions requiring government licensure examination regulated by the Professional Regulations Commission, Supreme Court, etc[.]

The CIR's examination of BUSECO's books disclosed that the professional fees paid to Atty. Eleuterio Diao (**Atty. Diao**) exceeded the threshold amount of ₱720,000.00. Accordingly, the CIR subjected such payments to a 15% EWT pursuant to RR No. 30-2003.[100]

BUSECO, however, contends that the amounts recorded as legal fees payable to Atty. Diao did not represent compensation for legal services rendered. According to BUSECO, these amounts pertained to processing fees and docket fees associated with its applications before the Energy Regulatory Commission (ERC). BUSECO explains that, as part of its accounting practice, whenever payments are required by regulatory agencies, its legal counsel or representatives initially secure the necessary funds through a cash advance or cash request. These transactions are subsequently recorded under the account "Legal Services."

BUSECO further asserts that the amounts assessed by the CIR do not represent compensation for legal services rendered by Atty. Diao, but rather reimbursements for payments made to the ERC, the NEA, and other government agencies. Since such amounts do not constitute income received by Atty. Eleuterio Diao, BUSECO argues that they are not subject to EWT.[101]

The Court *En Banc* is unconvinced.

Based on the subsidiary ledger of BUSECO's Accounts Payable account for Atty. Diao, the total amount recorded as due to him for taxable year 2014 amounted to ₱1,678,031.16, net of reversals. The entries were described as "Retainer & Other Fees," "Success Fee," "Legal Services & Other Fees," "Legal Fees – Various Cases," "Legal Services Rendered," and similar

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[100] Details of Discrepancies, Exhibit "R-12", BIR Records (Exhibit "R-26"), p. 719.
[101] Division Docket (CTA Case No. 9819), p. 20, Petition for Review.

accounts ordinarily indicative of compensation for professional services, as shown below:[102]

Particulars	Date	Reference	Debit	Credit
RETAINERS&OTHER FEE-	3/13/2014	APV#0014360		₱ 25,200.00
RETAINERS&OTHER FEE-	3/14/2014	CV#0033320	₱ 25,200.00	
SUCCESS FEE-ADMIN CASE	4/15/2014	APV#0014594		150,000.00
RETAINER&PLEADING FEES	4/15/2014	APV#0014595		34,600.00
SUCCESS FEE-ADMIN CASE	4/16/2014	CV#0033590	150,000.00	
RETAINER&PLEADING FEES	4/28/2014	CV#0033664	34,600.00	
LEGAL SERVICES&OTHER FEES	6/23/2014	APV#0014947		49,200.00
LEGAL SERVICES&OTHER FEES	7/01/2014	CV#0034192	49,200.00	
LEGAL SERVICES&OTHER FEES	8/14/t014	APV#0015345		45,700.00
LEGAL 5ERVICES&OTHER FEES SUCCESS FEE-ERC-20143 074	8/14/2014 8/20/2014	CV#0034608 APV#0015359	45,700.00	100,000.00
SUCCESS FEE-ERC-20143 074	8/20/2014	CV#0O34630	100,000.00	
SUCCESS FEE-ERC-20143 074	8/20/2014	CV#0O34631	100,000.00	
LEGAL&OTHER FEES	9/16/2014	APV#OO15579		194,000.00
SUCCESS FEE-NGCP-ANCILLIA	9/16/2014	APV#0015580		300,000.00
SUCCESS FEE-NGCP-ANCILLIA	9/17/2014	CV#0034895	300,000.00	
LEGAL&OTHER FEES	9/26/2014	CV/I0034965	194,000.00	
LEGAL SERVICES RENDERED	10/28/2014	APV#0015794		78,500.00
LEGAL SERVICES RENDERED	10/29/2014	CV#0035285	78,500.00	
RE:CANCEL CV34630ATTYDIAO	10/31/2014	JV#0008557		100,000.00
LEGAL FEES-VARIOUS CASE	11/18/2014	APV#0016054		143,771.41
LEGAL FEES-VARIOUS CASE	11/21/2014	CV#0035533	143,771.41	
LEGAL SERV. FEE-	11/28/2014	APV#0016179		227,000.00
LEGAL SERV. FEE-	12/11/2014	CV#0035655	227,000.00	
SUCCESS FEE-CEPADA CASE	12/29/2014	APV#0016339		330,059.75
SUCCESS FEE-CEPADA CASE	12/29/2014	CV#0035878	330,059.75	
Total			**₱1,778,031.16**	**₱1,778,031.16**
Less: Reversal of CV#0034630			100,000.00	100,000.00
Net of Reversal			**₱1,678,031.16**	**₱1,678,031.16**

Notably, BUSECO failed to present competent evidence showing that the amounts recorded in its books as payable to Atty. Diao were partly advances or reimbursements for payments made to government agencies. Neither were official receipts, billing statements, liquidation reports, nor other documentary evidence presented to establish that the amounts were paid directly to the ERC, NEA, or other government offices and did not redound to the benefit of Atty. Diao.

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[102] BIR Records (Exhibit "R-26"), p. 680.

The entries appearing in BUSECO's own books and records constitute admissions against interest and are presumed correct absent satisfactory proof to the contrary. Thus, in the absence of competent evidence rebutting the characterization of the amounts recorded in BUSECO's books, the entire amount of ₱1,678,031.16 shall be treated as professional fees paid or payable to Atty. Diao during taxable year 2014.

Since the amount exceeded the ₱720,000.00 threshold prescribed under RR No. 2-98, as amended, the CIR correctly subjected the same to 15% EWT.

Nevertheless, considering that the assessment for the months of January to November 2014 is already barred by prescription, only the amount of ₱330,059.75 pertaining to December 2014 may be considered in determining BUSECO's deficiency EWT liability.

Moreover, BUSECO failed to reconcile or explain the discrepancy between the amount assessed by the CIR of ₱2,100,375.60 and the amount of ₱1,678,031.16 reflected in its subsidiary ledger, leaving an unexplained difference of ₱422,344.44. In the absence of any supporting evidence showing the nature of such discrepancy, the same shall likewise be treated as professional fees paid or payable to Atty. Diao and, for purposes of the present assessment, shall be allocated to December 2014 and subjected to 15% EWT.

In sum, BUSECO is liable for basic deficiency EWT for December 2014 in the amount of ₱116,929.34, computed as follows:

	Amount	**EWT Rate**	**EWT Due**
Rental Expense	₱81,374.10	5%	₱ 4,068.71
Professional Fees	752,404.19	15%	112,860.63
Basic Deficiency EWT			**₱116,929.34**

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue in **CTA *EB* No. 2997** is hereby **DENIED** for lack of merit. Conversely, the *Petition for Review* filed by Bukidnon II Electric Cooperative, Inc. in **CTA *EB* No. 3013** is hereby **PARTIALLY GRANTED**.

Accordingly, the *Decision* dated November 28, 2023 and the *Resolution* dated August 29, 2024 of the Court's Special Third Division in **CTA Case No. 9761** are hereby **AFFIRMED.** However, insofar as **CTA Case No. 9819** is concerned, the dismissal of the *Petition for Review* on jurisdictional grounds is hereby **REVERSED** and **SET ASIDE**.

Consequently, the Court *En Banc* rules as follows:

1. The deficiency **Income Tax (IT)** assessment issued against Bukidnon II Electric Cooperative, Inc. for taxable year 2014 is **CANCELLED and SET ASIDE**, petitioner being exempt therefrom pursuant to Section 39 of Presidential Decree No. 269, as amended;

2. The deficiency **Value-Added Tax (VAT)** assessments for the first (1st) to third (3rd) quarters of taxable year 2014, and the deficiency **Expanded Withholding Tax (EWT)** assessments for the period January 2014 to November 2014, are **CANCELLED and SET ASIDE** on the ground of prescription; and

3. BUSECO is **ORDERED TO PAY** the CIR the aggregate amount of **₱438,436.86**, inclusive of the 25% surcharge, deficiency and delinquency interests imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018, computed as follows:

	VAT	**EWT**	**Total**
Basic Tax	₱ 119,969.82	₱116,929.34	₱236,899.16
Surcharge (25%)	29,992.46	29,232.34	59,224.80
Deficiency Interest (20%)			
from Jan. 26, 2015 to Dec. 31, 2017 *(₱119,969.82 X 20% X 1,071/365 days)*	70,404.21		70,404.21
from Jan. 16, 2015 to Dec. 31, 2017 *(₱116,929.34 x 20% x 1,081/365 days)*		69,260.61	69,260.61
Deficiency Interest (12%)			
from Jan. 1, 2018 to Feb. 4, 2018			
(₱119,969.82 X 12% X 34/365 days)	1,341.03		1,341.03
(₱116,929.34 x 12% x 34/365 days)		1,307.05	1,307.05
Total Amount Due as of February 4, 2018	**₱221,707.52**	**₱216,729.34**	**₱438,436.86**

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In addition, BUSECO is **ORDERED TO PAY** the CIR delinquency interest at the rate of twelve percent (12%) per annum on the **₱438,436.86** total amount due as of February 4, 2018, or an amount equivalent to **₱144.14** per day,[103] from February 4, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I join the Concurring and Dissenting Opinion of Justice Flores)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
CORAZON G. FERRER-FLORES
Associate Justice

(Kindly see my Separate Concurring and Dissenting Opinion)
HENRY S. ANGELES
Associate Justice

103 ₱438,436.86 x 12%/365 days.

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 consolidated cases were assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

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

CTA EB Nos. 2997 & 3013
(CTA Case Nos. 9761 & 9819)

x - x

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

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Members:

RINGPIS-LIBAN, *P.J.,*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

JUL 07 2026

x- x

CONCURRING and DISSENTING OPINION

FERRER-FLORES, J.:

I concur with the *ponencia* that the *Petition for Review* filed by the Commissioner of Internal Revenue (CIR), docketed as CTA EB No. 2997, must be dismissed for lack of authority from the Office of the Solicitor General (OSG). I also agree that, as aptly found by the Court in Division, in CTA Case No. 9761the absence of a Letter of Authority renders the assessment void.

With due respect, however, I am unable to agree with the holding of the *ponencia* in CTA EB No. 3013, that the Letter dated February 20, 2018 (Letter) constituted a decision appealable to the Court of Tax Appeals (CTA), thereby vesting this Court with jurisdiction over the *Petition for Review* filed by Bukidnon Second Electric Cooperative, Inc. (BUSECO).

It is my stance that the "other matters" jurisdiction of this Court, pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), cannot be applied in the instant case, particularly in CTA Case No. 9819 and the present appeal, CTA EB No. 3013.

In my view, the CTA never acquired jurisdiction over the case because there was no appealable decision on the disputed assessment. The Letter cannot be considered a Final Decision on a Disputed Assessment (FDDA) nor a final denial of BUSECO's protest. Consequently, the *Petition for Review* was prematurely filed and was correctly dismissed outright.

Section 7(a)(1) of Republic Act (R.A.) No. 1125,[1] as amended by R.A. No. 9282,[2] provides:

> 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.

Jurisprudence has consistently construed the term "decision" as referring to the Commissioner's determination on the taxpayer's protest against an assessment, and not the assessment itself. Thus, what is appealable to the CTA is the Commissioner's final action resolving the protest.

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1 AN CREATING THE COURT OF TAX APPEALS.
2 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.

Corollarily, Revenue Regulations (RR) No. 12-99,[3] as amended by RR No. 18-2013,[4] expressly prescribes the requisites of an FDDA:

> 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, and (ii) **that the same is his \[or her] final decision.** (Emphasis supplied)

The requirement is not a mere formality as it embodies the long-settled rule that the taxpayer must be informed in clear, categorical, and unequivocal language that the Commissioner has already reached a final determination on the protest. Absent such finality, the taxpayer cannot be expected to know that the administrative process has ended and that recourse to the CTA has become necessary.

A careful perusal of the Letter reveals that the Bureau of Internal Revenue (BIR) informed BUSECO that it cannot grant the request for reconsideration unless a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (Waiver) is executed and submitted within five days from receipt thereof. Failure to do so, the assessment shall become final, executory and demandable.

A plain reading of the Letter reveals that it was not a final resolution of BUSECO's protest.

First, the Letter did not categorically deny the protest. Instead, it expressly stated that the request for reconsideration "cannot be granted unless" a waiver is executed. Such language indicates that the BIR was still conditioning further action on the protest upon submission of the required documents.

Second, nowhere in the Letter did it state that it was the Commissioner's final decision. It lacked the unequivocal declaration contemplated under RR No. 12-99, as amended, that the same constituted the BIR's final determination of the disputed assessment.

Third, the Letter itself contemplated further administrative proceedings. By directing BUSECO to submit a duly executed Waiver and

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[3] 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, 1999.

[4] A mending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

Special Power of Attorney, the BIR was effectively leaving the matter open for further consideration. A communication which still invites compliance and contemplates subsequent action cannot simultaneously be treated as a final disposition of the protest.

Clearly, the Letter cannot be reasonably characterized as an FDDA or its equivalent.

The *ponencia* concludes that the Letter effectively operated as a denial because BUSECO opted not to submit the requested waiver, thereby ending the administrative process.

I respectfully disagree.

While I submit that the FDDA is not the only issuance of the CIR or his duly authorized representative, which may be considered to be the final decision on a disputed assessment, the receipt of which would, in turn, trigger the 30-day period for taxpayer to file his protest, I respectfully maintain that, irrespective of nomenclature, the issuance must be intended to and must, in fact, operate as an FDDA by unequivocally conveying respondent's final determination on the taxpayer's protest.

In *Commissioner of Internal Revenue vs. Isabela Cultural Corporation* (*Isabela*),[5] the Supreme Court considered the Final Notice Before Seizure (FNBS) issued by the CIR to be his decision disposing of the taxpayer's request for consideration because its content and tenor revealed that it was indeed his final act regarding the said request. The Supreme Court also emphasized the significance of the language used in the letter, particularly the presence of a "threat" of collection, in determining whether the letter constituted a final decision.

In *Oceanic Wireless Network Inc. vs. Commissioner of Internal Revenue*,[6] the Supreme Court likewise held that the determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer, viz:

> We laid down the rule that the Commissioner of Internal Revenue should always indicate to the taxpayer in **clear and unequivocal language what constitutes his final determination of the disputed assessment**, thus:
>
> . . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal

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[5] G.R. No. 135210, July 11, 2001.
[6] G.R. No. 148380, December 9, 2005.

language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.

The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.

In this case, the letter of demand dated January 24, 1991, unquestionably constitutes the final action taken by the Bureau of Internal Revenue on petitioner's request for reconsideration when it reiterated the tax deficiency assessments due from petitioner, and requested its payment. Failure to do so would result in the "issuance of a warrant of distraint and levy to enforce its collection without further notice." In addition, the letter contained a notation indicating that petitioner's request for reconsideration had been denied for lack of supporting documents.

The above conclusion finds support in *Commissioner of Internal Revenue v. Ayala Securities Corporation*, where we held:

> The letter of February 18, 1963 (Exh. G),in the view of the Court, is tantamount to a denial of the reconsideration or [respondent corporation's] ...protest o[f] the assessment made by the petitioner, considering that the said letter [was] in itself **a reiteration of the demand by the Bureau of Internal Revenue for the settlement of the assessment already made**, and for the **immediate payment** of the sum of P758,687.04 in spite of the vehement protest of the respondent corporation on April 21, 1961. This certainly is a clear indication of the firm stand of petitioner against the reconsideration of the disputed assessment ... This being so, the said letter amount[ed] to a decision on a disputed or protested assessment, and, there, the court *a quo* did not err in taking cognizance of this case.

Similarly, in *Surigao Electric Co., Inc. v. Court of Tax Appeals*, and in *CIR v. Union Shipping Corporation*, we held:

> ...In this letter, the commissioner not only in effect demanded that the petitioner pay the amount of P11,533.53 but also gave warning that in the event it failed to pay, the said commissioner would be constrained to enforce the

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> collection thereof by means of the remedies provided by law. The **tenor of the letter, specifically the statement regarding the resort to legal remedies, unmistakably indicate[d] the final nature of the determination** made by the commissioner of the petitioner's deficiency franchise tax liability. (Emphases supplied)

In *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*[7], the Supreme Court reiterated its ruling in *Surigao Electric Co., Inc. vs. Court of Tax Appeals*[8], to wit:

> It was under the factual backdrop of *Surigao Electric Co., Inc.* that this Court admonished Commissioner to **indicate in clear and unequivocal language what constitutes final action on a disputed assessment** to avoid repeated requests for reconsideration by the taxpayer. This is also **to avoid the taxpayer grope in the dark as to which communication or action from the Bureau of Internal Revenue may be the decision appealable to the tax court.**

In *Allied Banking Corporation vs. Commissioner of Internal Revenue*,[9] moreover, the Supreme Court held:

> The Commissioner of Internal Revenue (CIR) as well as his duly authorized representative **must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment. Words must be carefully chosen in order to avoid any confusion that could adversely affect the rights and interest of the taxpayer.**
>
> xxx xxx xxx
>
> xxx We have time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination **thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues.** xxx (Emphases supplied)

In *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation,*[10] the Supreme Court held that the FDDA, like the Formal Letter of Demand and Final Assessment Notice (FLD/FAN), **must also state the law and facts on which it is based,** viz:

> Nevertheless, the requirement of providing the taxpayer with written notice of the facts and law used as basis for the assessment is not to be mechanically applied. Emphasis on the purpose of the written notice is important. The requirement should be in place so that the taxpayer could

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7 G.R. No. 225809, March 17, 2021.
8 G.R. No. L-25289, June 28, 1974.
9 G.R. No. 175097, February 5, 2010.
10 G.R. Nos. 215534 & 215557, April 18, 2016.

be adequately informed of the basis of the assessment enabling him to prepare an intelligent protest or appeal of the assessment or decision. xxx

xxx xxx xxx

Thus, substantial compliance with the requirement under Section 228 of the NIRC is permissible, provided that the taxpayer would be eventually **apprised in writing of the factual and legal bases of the assessment to allow him to file an effective protest against.**

The above-cited cases refer to the compliance of the FAN/FLD of the due process requirement embodied in Section 228 of the NIRC and RR No. 12-99. These may likewise [be] **applied to the FDDA, which is similarly required to include a written notice of the factual and legal bases thereof**. Without sounding repetitious, it is important to note that Section 228 of the NIRC did not limit the requirement of stating the facts and law only to the FAN/FLD. On the other hand, **RR No. 12-99 detailed the process of assessment and required that both the FAN/FLD and the FDDA state the law and facts on which it is based**. (Emphases supplied)

Considering the foregoing, the Letter, which informed BUSECO of the BIR's position regarding the taxability of its income and required the submission of a Waiver before the protest could be acted upon, neither contained a categorical denial of the protest, nor did it state that it constituted the BIR's final determination, and unmistakably contemplated further administrative proceedings.

It is my humble view that if a letter of the same tenor is to be considered the final decision on the disputed assessment, it would create uncertainty for the taxpayer as to which ruling is properly appealable to this Court and the reckoning period within which such an appeal must be filed. This situation is problematic because it may effectively deprive the taxpayer of judicial remedy.

To my mind, the character of a communication as a final decision is determined by the contents of the communication itself and by the action taken by the tax authorities—not by the taxpayer's subsequent decision to comply or not comply with a directive contained therein.

I still hold that a letter that is not final when issued does not become a final decision merely because the taxpayer declines to satisfy a condition imposed by the BIR. To hold otherwise would permit taxpayers to unilaterally convert interlocutory or preliminary administrative communications into appealable decisions simply by refusing to comply with BIR directives.

The jurisdiction of the CTA cannot depend on the taxpayer's subjective interpretation of a letter or on subsequent events unrelated to the actual issuance of a final determination by the Commissioner or his authorized representative.

Simply stated, the BIR never issued a final decision. The taxpayer's refusal to execute the waiver cannot supply what was never issued in the first place.

The *ponencia* further reasons that the requested waiver had become inutile because it was demanded only after the issuance of the Final Assessment Notice/Formal Letter of Demand (FAN/FLD), such that it could no longer serve the purpose of extending the period for assessment.

With all due respect, however, I find that this reasoning overlooks the fact that a waiver under the National Internal Revenue Code (NIRC) of 1997, as amended, is not relevant solely to the period for assessment.

Even assuming that the prescriptive period for assessment was no longer at issue, a waiver may likewise have significance with respect to the government's authority to collect taxes and the preservation of the government's remedies under the NIRC of 1997, as amended. Accordingly, it cannot be categorically stated that the requested waiver had already become inutile.

More importantly, whether the BIR correctly required the waiver is beside the point. Even if the BIR's insistence on the execution of a waiver were legally erroneous, such circumstance would not convert the Letter into a final denial of the protest.

The controversy before us originated from a disputed assessment. Consequently, the applicable jurisdictional provision remains Section 7(a)(1) regarding decisions of the Commissioner in disputed assessments.

The "other matters" clause cannot be invoked to avoid the statutory requirement of an appealable decision where the dispute directly involves tax assessments and a pending protest thereof. To rule otherwise would effectively render meaningless the requirement that there first be a reviewable decision by the Commissioner.

Absent such decision, there is nothing for the CTA to review in the exercise of its appellate jurisdiction.

Since no appealable decision existed, the CTA never acquired jurisdiction over the *Petition for Review.* BUSECO's mistaken characterization of the Letter as a final denial cannot confer jurisdiction upon the Court.

ALL TOLD, I vote to **DENY** the **Petitions for Review** and **AFFIRM** the assailed Decision and assailed Resolution.

CORAZON G. FERRER-FLORES
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB Case Nos. 2997 & 3013** CTA Case Nos. 9761 & 9819
- versus -	Members:
BUKIDNON II ELECTRIC COOPERATIVE, INC. (BUSECO), *Respondent.*	**RINGPIS-LIBAN, *P.J.*, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES, and ANGELES, *JJ.***
BUKIDNON SECOND ELECTRIC COOPERATIVE, INC. (BUSECO), *Petitioner.*	
- versus -	Promulgated:
COMMISSIONER OF INTERNAL REVENUE (CIR), *Respondent,*	JUL 07 2026 4:30

x - x

SEPARATE CONCURRING AND DISSENTING OPINION

ANGELES, *J.*:

I register my concurrence in the ruling of my esteemed colleague, Associate Justice Lanee S. Cui-David, granting the present appeal in CTA EB No. 3013, and thereby ruling that *the Court in Division has jurisdiction over CTA Case No. 9819*. Indeed, the Court *a quo* erred in concluding that the *Letter* dated February 20, 2018 is not appealable to the Court of Tax Appeals (CTA).

Careful examination of such *Letter* reveals a tenor of finality in the sense that the BIR has already made up its mind with regard to the disputed assessment and will only reconsider if herein petitioner executes a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code. In *Allied Banking*

Corporation v. Commissioner of Internal Revenue,[1] the Supreme Court emphasized that the taxpayer cannot be faulted for resorting to judicial remedy when it relied on the language and tenor used by the BIR. It was pronounced therein that the latter is estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision, when it led petitioner to believe that it was in fact the final decision on its protest and the only available remedy left was for the taxpayer to appeal to the CTA, *viz.*:

> Nevertheless, we cannot blame petitioner for not filing a protest against the Formal Letter of Demand with Assessment Notices since the **language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter**. We have time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. Viewed in the light of the foregoing, respondent is now estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision.
>
> xxx xxx xxx
>
> As we see it then, **petitioner in appealing** the Formal Letter of Demand with Assessment Notices to the CTA **merely took the cue from respondent.**
>
> xxx xxx xxx
>
> What we are saying in this particular case is that, the Formal Letter of Demand with Assessment Notices which was not administratively protested by the petitioner **can be considered a final decision of the CIR appealable to the CTA because the words used**, specifically the words "final decision" and "appeal", taken together **led petitioner to believe that** the Formal Letter of Demand with Assessment Notices **was in fact the final decision** of the CIR on the letter-protest it filed **and that the available remedy was to appeal the same to the CTA.**

Applying the foregoing, by the tenor and language of the subject *Letter*, the fact that it contains a statement which provides that the failure to execute a Waiver would render the assessment as final, executory, and demandable, leaves herein petitioner no other recourse but to seek judicial remedy before this Court. Hence, I agree that petitioner timely filed the same, or within twenty-eight (28) days from its receipt thereof.

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[1] G.R. No. 175097, February 5, 2010.

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Nevertheless, with due respect, I am constrained to submit my reservations as regards the pronouncements of the *ponencia*, which provide that the *issue of whether electric cooperatives remain exempt from income tax is no longer novel.* It may be noted that the cases cited therein are mere *En Banc* cases of this Court that have not ripened into jurisprudence.

Respectfully, I submit hereunder the considerations that impel the reasons for my dissent by first enumerating, the relevant legal issuances on this matter, to wit:

(1) PD No. 269 decreed by former president Ferdinand E. Marcos in 1973, granting unto NEA cooperatives permanent exemption from paying income taxes. Section 39(a) thereof provides:

> **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, cooperative **(1) shall be permanently exempt from paying income taxes**, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or 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. *(Emphasis supplied)*

(2) PD No. 776[2] decreed by former president Marcos in 1975, creating the FIRB for the purpose of determining what subsidies and tax exemptions should be modified, withdrawn, revoked or suspended. Sections 1 and 2 thereof read:

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[2] *Modifying all laws, acts, decrees, orders and ordinances granting subsidies, exemptions from taxes, duties, fees, imposts and other charges under certain exceptions, and creating a Fiscal Incentives Board*, August 24, 1975.

> SECTION 1. **Any and all tax exemption benefits and privileges validly acquired, exercised and granted to individuals, associations, corporations and entities, and all laws, decrees, orders or ordinances giving rise thereto, may now be modified by the Fiscal Incentives Review Board** except those embraced and expressly provided hereunder, to wit:
>
> 1. Constitutional provisions
>
> 2. International comity or treaty
>
> 3. National Internal Revenue Code as of its amendment by PD 69
>
> 4. Tariff and Customs Code as of its amendment by PD 34
>
> 5. Local Tax Code as of its amendment by PD 426
>
> 6. Statutory prescription bearing on –
>   a. Export Processing Zone Authority
>   b. BOI-Registered industries
>   c. Multi-national corporations
>   d. Service contracts on oil explorations
>
> SECTION 2. A Fiscal Incentives Review Board is hereby created **for the purpose of determining what subsidies and tax exemptions should be modified, withdrawn, revoked or suspended**, which shall be composed of the following officials: xxx xxx xx
>
> *(Emphasis supplied)*

(3) PD No. 1955[3] decreed by former president Marcos in 1984, withdrawing all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts and other charges granted to private business enterprises and/or persons engaged in any economic activity, subject to exceptions;

(4) PD No. 2008[4] decreed by former president Marcos in 1986, restoring certain privileges to cooperatives which are in good standing, subject to conditions;

(5) EO No. 93 decreed by former president Corazon C. Aquino in 1986, withdrawing all tax and duty incentives granted to government and private entities, subject to exceptions; and granting unto the FIRB the authority to, among others, restore tax exemptions withdrawn under the said Order, revise the scope and coverage of tax exemptions

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[3] *Withdrawing Duty and Tax Privileges of Private Business Enterprises and/or Persons Engaged in Any Economic Activity*, October 10, 1984.
[4] Amendments to PD No. 175, as amended by PD No. 1955, January 8, 1986.

that may be restored, and impose conditions for the restoration of such tax exemptions. Sections 1, 2 and 5 of the said Order state:

> 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**, except:
>
> a) those covered by the non-impairment clause of the Constitution;
>
> b) those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;
>
> c) those enjoyed by enterprises registered with:
> (i) the Board of Investments pursuant to Presidential Decree No. 1789, as amended;
> (ii) the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;
> (iii) the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended;
>
> d) those enjoyed by the copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;
>
> e) those conferred under the four basic codes namely:
> (i) the Tariff and Customs Code, as amended;
> (ii) the National Internal Revenue Code, as amended;
> (iii) the Local Tax Code, as amended;
> (iv) the Real Property Tax Code, as amended;
>
> f) those approved by the President upon the recommendation of the Fiscal Incentives Review Board.
>
> SECTION 2. **The Fiscal Incentives Review Board created under Presidential Decree No. 776, as amended, is hereby authorized to:**
>
> **a) restore tax and/or duty exemptions withdrawn hereunder in whole or in part;**
>
> **b) revise the scope and coverage of tax and/or duty exemption that may be restored;**
>
> **c) impose conditions for the restoration of tax and/or duty exemption;**
>
> d) prescribe the date or period of effectivity of the restoration of tax and/or duty exemption;
>
> e) formulate and submit to the President for approval, a complete system for the grant of subsidies to deserving beneficiaries, in lieu of or in combination with the restoration

> of tax and duty exemptions or preferential treatment in taxation, indicating the source of funding therefor, eligible beneficiaries and the terms and conditions for the grant thereof taking into consideration the international commitments of the Philippines and the necessary precautions such that the grant of subsidies does not become the basis for countervailing action.
>
> xxx xxx xxx
>
> SECTION 5. All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly. *(Emphasis supplied)*

(6) FIRB Resolution No. 24-87 issued by the FIRB in 1987, restoring the tax exemption privileges of electric cooperatives under PD No. 269 effective July 1, 1987, except for income from their electric service operations and other sources which shall remain taxable. The said Resolution is reproduced, 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 supplied)*

(7) RA No. 6938 (Cooperative Code of the Philippines)[5] signed into law by former president Aquino in 1990, as amended by RA No. 9520 (Philippine Cooperative Code of 2008)[6] signed into law by former president Gloria Macapagal Arroyo in 2009; and,

(8) RA No. 10531 signed into law by former president Benigno S. Aquino III in 2013, amending certain provisions of PD No. 269, and

[5] March 10, 1990.
[6] February 17, 2009.

inserting new provisions thereto. **Notably, RA No. 10531 is silent as to Section 39(a) of PD No. 269.** Sections 13 and 18 of RA No. 10531, however, provide:

> SECTION 13. A new section, to be designated as Section 32-A, of Presidential Decree No. 269, as amended, is hereby inserted to read as follows:
>
> "SEC. 32-A. *Incentives of Electric Cooperatives.* — Consistent with the declared policy of this Act, **electric cooperatives which comply with the financial and operational standards set by the NEA shall enjoy the following incentives:**
>
> "(a) To be entitled to congressional allocations, grants, subsidies and other financial assistance for rural electrification;
>
> "(b) To receive all subsidies, grants and other assistance which shall form part of the donated capital and funds of the electric cooperatives, and as such, it shall not be sold, traded nor divided into share holdings at any time. These donated capital and funds shall be appraised and valued for the sole purpose of determining the equity participation of the members: *Provided,* That in case of dissolution or conversion of the electric cooperative, said donated capital and funds shall be subject to escheat; and
>
> "(c) To avail of the preferential rights granted to cooperatives under Republic Act No. 7160, otherwise known as the 'Local Government Code of 1991', and other related laws.
>
> "As a further incentive, the NEA may prioritize the grant of incentives in favor of electric cooperatives that are managed effectively and efficiently and comply consistently with its mandates and directives."
>
> xxx xxx xxx
>
> SECTION 18. *Repealing Clause.* — Article 132 (3) of Republic Act No. 9520 and Section 30 of Republic Act No. 9136 (EPIRA) on NEA's authorized capital stock are hereby repealed. Any other provision of law, presidential decree, executive order, or rules and regulations inconsistent with the provisions of this Act or with the rules and regulations issued pursuant thereto are hereby repealed or modified accordingly.

A thorough review of the foregoing ultimately reveals that while Section 39(a) of PD No. 269 indeed granted unto NEA cooperatives tax and duty exemption privileges, EO No. 93 eventually withdrew all such privileges, subject to exceptions, and vested in the FIRB the authority to restore such privileges, to revise the scope and coverage of the privileges to be restored, and to impose conditions for the restoration. Clearly, then, Section 39(a) of PD No. 269 was effectively repealed by EO No. 93. Although Memorandum Order No. 65[7] suspended the implementation of EO No. 93 on electric cooperatives, such suspension ended on June 30, 1987.

Thereafter, the FIRB, by virtue of the authority vested in it by EO No. 93, issued FIRB Resolution No. 24-87 which restored the tax and duty incentives of NEA cooperatives under Section 39(a) of PD No. 269, but revised the scope and coverage of such incentives by **excluding income tax exemption on electric service operations and other sources.**

It bears stressing that the Supreme Court in *Maceda v. Macaraig,*[8] Jr., categorically declared EO No. 93 as complete in itself and constitutive of a valid delegation of legislative power to the FIRB. Further, in *Davao Oriental Electric Cooperative, Inc. v. Province of Davao Oriental,*[9] the Supreme Court, in resolving the issue of retroactivity of FIRB Resolution No. 24-87, necessarily recognized the validity of the same.

It is true that the above-mentioned cases were promulgated before the enactment of RA No. 10531, or the "National Electrification Administration Reform Act of 2013"; regardless, **scrutiny of the said law shows that none of the provisions therein either expressly or impliedly amends EO No. 93 in relation to FIRB Resolution No. 24-87, which, in turn, amended Section 39(a) of PD No. 269.**

Thus, there is really nothing in Section 32-A of RA No. 10531, nor in any other provision thereof, nor in its Implementing Rules and Regulations,[10] which states that the permanent income tax exemption of electric cooperatives under Section 39(a)(1) of PD No. 269, as amended, is retained or restored.

Furthermore, there is no irreconcilable inconsistency existing between or among any of the amended and additional provisions incorporated by RA No. 10531 to PD No. 269, and EO No. 93 in relation to FIRB Resolution No. 24-87, so as to warrant the construction of an implied repeal of the latter by the former. In fact, RA No. 10531 makes

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[7] *Suspended Implementation of E.O. No. 93 for Certain Cooperatives,* January 21, 1987.
[8] G.R. No. 88291, May 31, 1991.
[9] G.R. No. 170901, January 20, 2009.
[10] DOE Department Circular No. DC2013-07-0015, July 26, 2013.

no modification whatsoever on Section 39(a) of PD No. 269 relative to income tax exemption on electric service operations and other sources.

Section 39(a) of PD No. 269 has already been amended by EO No. 93 and validly qualified by FIRB Resolution No. 24-87, as discussed above. Thus, per Section 39(a) of PD No. 269 as it currently stands, income of electric cooperatives governed by PD No. 269 from 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, are subject to income tax.

There being no modification on Section 39(a) of PD No. 269 upon the enactment of RA No. 10531, Section 39(a) of PD No. 269, **as amended by EO No. 93 and further qualified by FIRB Resolution No. 24-87**, remains in full force and effect.

More so, it is a fundamental principle in taxation that tax exemptions must be expressed in the statute in clear language that leaves no doubt as to the intention of the legislature to grant such exemption.[11] Stated differently, tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken.[12] Even if it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[13]

As the right of taxation is inherent in the State and a prerogative essential to the perpetuity of the government, he who claims an exemption from the common burden must justify his claim by the clearest grant of organic or statute law.[14]

In light of the foregoing, while I concur with the result of GRANTING the *Petition for Review* in CTA EB No. 3013 before this Court, upholding the jurisdiction of the Court *a quo* over the case, I dissent and maintain my position that electric cooperatives are not exempt from income tax.

HENRY S. ANGELES
Associate Justice

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[11] *PLDT v. City of Davao*, G.R. No. 143867, August 22, 2001.
[12] *Philippine Long Distance Telephone Co. v. City of Davao*, G.R. No. 143867 (Resolution), March 25, 2003.
[13] *Id.*
[14] *Asiatic Petroleum Co., Ltd. v. Llanes*, G.R. No. 25386, October 20, 1926.