ECREPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10145

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
FEB 28 2023
4:45 p.m.

x--x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Misamis Oriental II Rural Electric Service Cooperative, Inc. (**petitioner/MORESCO-II**), pursuant to Section 3(a)[2], Rule 8, in relation to Section 3(a)(1)[3], Rule 4 of

[1] Filed on 30 July 2019, Division Docket, pp. 10-22.

[2] **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.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

the Revised Rules of the Court of Tax Appeals[4] **(RRCTA)**. It prays for the cancellation of the Final Decision on Disputed Assessment **(FDDA)** issued by respondent Commissioner of Internal Revenue **(respondent/CIR)** dated 21 May 2019[5], finding it liable for an income tax **(IT)** deficiency amounting to ₱21,354,622.81 and compromise penalties totalling to ₱25,000.00 for taxable year **(TY)** 2015.

PARTIES OF THE CASE

Petitioner is a non-stock, non-profit electric cooperative with a Certificate of Registration issued by the National Electrification Administration **(NEA)** with principal office at Medina, Misamis Oriental.

Respondent, on the other hand, is the duly-appointed CIR empowered to perform the duties of said office including, among others, the power to decide, approve, and grant tax refunds or tax credits as provided for by law. His or her office address is at Bureau of Internal Revenue **(BIR)** National Office Building, BIR Road, Diliman, Quezon City.

FACTS OF THE CASE

On 06 August 1973, Presidential Decree **(PD)** No. 269, otherwise known as "National Electrification Administration Decree", was signed into law thereby creating the National Electrification Administration **(NEA)**. The NEA is vested with the power to regulate electric cooperatives **(ECs)**, among others. The said decree further provided certain incentives for ECs embodied in Section 39 thereof, to wit:

...

(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[.]

...

4 A.M. No. 05-11-07- CTA dated 22 November 2005.

5 Division Docket, pp. 88-92.

...

Sec. 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.* Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperatives (1) **shall be permanently exempt from paying income taxes**, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: *Provided*, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree.[6]

...

Subsequently, PD 1955[7], which was signed on 10 October 1984, withdrew all exemptions from or any preferential treatment in the payment granted to private business enterprises (including those granted to ECs under PD 269).

Later on, Executive Order (EO) No. 93[8], signed on 17 December 1986, further affirmed the withdrawal of such fiscal incentives but authorized the Fiscal Incentives Review Board (**FIRB**) to restore tax and duty exemptions to affected industries.

---

6 Emphasis supplied.

7 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.

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

On 14 July 1987, FIRB issued FIRB Resolution No. 24-87 restoring the privileges that PD 269 had granted to ECs, 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.
>
> (SGD.) JAIME V. ONGPIN
> Secretary of Finance
> Chairman, FIRB
> ...

On 10 March 1990, Republic Act (**RA**) No. 6938 (or the Cooperative Code of the Philippines) was enacted allowing ECs to register under the Cooperative Development Authority (**CDA**) upon compliance with certain registration requirements and enjoy preferential tax treatments afforded to cooperatives. RA 6938 was further amended with the enactment of RA 9520 (otherwise known as the Philippine Cooperative Code of 2008).

Still later, RA 10531 or the National Electrification Administration Reform Act of 2013 was enacted and amended PD 269 which retained the benefits provided under Section 39 of PD 269. Section 12 of the Act further provided a rule on registration of ECs as follows:

...

SEC. 12. Section 32 of Presidential Decree No. 269, as amended, is hereby further amended to read as follows:

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

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

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

(a) Monthly Financial and Statistical Report (MFSR);

(b) monthly separate MFSR. Monthly Engineering Report (MER) and barangay and *sitio* electrification report fear electric cooperatives on grid with isolated area/s served by NPC-SPUG;

(c) monthly status of barangay and *sitio* energization and house connections;

(d) monthly Institutional Services Department (ISD) report;

(e) monthly Performance Standard Monitoring Report (PSMR);

(f) monthly summary of complaints received and acted upon;

(g) monthly report on compliance with the Grid and Distribution Code:

(h) Monthly Engineering Report (MER);

(i) quarterly report on power supply contracts;

(j) annual work plan;

(k) annual Distribution Development Plan (DDP);

(l) five (5)-year investment plan submitted annually;

(m) annual Cash Operating Budget (COB);

(n) audited financial statements;

(o) annual Collective Bargaining Agreement (CBA) or Collective Negotiation Agreement (CNA); and

(p) copy of Capital Expenditure (CAPEX) and Operating Expenditure (OPEX) plans.

Likewise, the supervisory and oversight functions of the NEA, as may be detailed in this Act and its IRR, shall be applicable to both stock and non-stock cooperatives.

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

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

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

...

On 02 July 2019, petitioner received respondent's FDDA, denying its protest to a tax assessment and holding the former liable for ₱21,354,622.81 and ₱25,000.00, deficiency IT and compromise penalty, respectively, for TY 2015.

As a result of the denial, on 30 July 2019, petitioner filed the present petition before the Court in Division maintaining its exemption from the payment of IT under PD 269 and the impropriety of respondent's imposition of compromise penalties.

PROCEEDINGS BEFORE THE COURT

Upon review of the timeliness of petitioner's filing (of its petition), the Court issued Summons[9] on respondent on 05 August 2019.

On 07 October 2019, respondent filed his or her Answer[10] and argued that petitioner's assessment was valid as its tax exemption had already been withdrawn and that its failure to register with the CDA disqualified it from enjoying a preferential tax treatment.

On 11 October 2019, the Court issued a Notice of Pre-trial Conference[11] and ordered the parties to submit their respective Pre-trial Briefs (**PTBs**). Respondent filed his or her PTB[12] on 30 October 2019 while petitioner filed its own PTB[13] on 07 November 2019.

On 07 November 2019, the pre-trial conference was held and the parties were ordered[14] to appear before the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for a possible settlement of petitioner's claim. *Per* the Court's Resolution dated 01 March 2021[15], the parties failed to reach a compromise. On 08 March 2022, the parties submitted their Joint Stipulation of Facts and Issues[16] (**JSFI**). Thereafter, on 11 March 2022, the Court issued a Pre-Trial Order[17] setting the initial presentation of petitioner's evidence on 14 March 2022.

During the trial, petitioner presented its lone witness, Leila Piastro (**Piastro**), who testified through her judicial affidavit.[18] There, Piastro declared that as petitioner's Certified Public Accountant (**CPA**), she was aware of respondent's assessment against petitioner. She further testified to petitioner's receipt of notices and demands from the BIR regarding the payment of the alleged tax deficiencies. As regards the

---

9 Division Docket, p. 93.
10 Id., pp.105-113.
11 Id., pp.115-116.
12 Id., pp.117-120.
13 Id., pp.128-132.
14 See Resolution dated 07 November 2019, id., p. 134.
15 Id., pp. 201-203.
16 Id., pp. 228-232.
17 Id., pp. 234-237.
18 Judicial Affidavit of Leila Piastro, id., pp. 142-147.

assessment, Piastro opined that petitioner was exempt from the payment of IT as EC registered with the NEA.

Respondent did not cross-examine Piastro. Considering that only a legal issue was to be resolved (particularly, petitioner's exemption from the payment of IT), the Court ordered the parties to submit their respective memoranda within thirty (30) days in an Order dated 14 March 2022.[19]

Respondent filed its Memorandum[20] on 12 April 2022 while petitioner filed its own Memorandum[21] on 20 April 2022. With its receipt of the parties' respective memoranda, the Court submitted the instant case for decision as contained in its Resolution dated 05 May 2022.[22]

ISSUE

A single question of law is presented for this Court's resolution –

WHETHER PETITIONER MISAMIS ORIENTAL II RURAL ELECTRIC SERVICE COOPERATIVE, INC. (MORESCO II) IS EXEMPTED FROM THE PAYMENT OF INCOME TAX.

ARGUMENTS

In its bid for a favorable decision, petitioner contends that as an EC, it is exempted from the payment of IT by virtue of Section 39 of PD 269 despite its non-registration with the CDA. It further argues that respondent's claim that its exemption had already expired is erroneous since its IT exemption is permanent in character. Lastly, petitioner assails the imposition of compromise penalties and maintains that the same is only proper in cases of settlement of tax liabilities and not when the taxpayer is unwilling to pay the same.

---

19 Id., p. 239.
20 Id., pp. 244-257.
21 Id., pp. 259-265.
22 Id., p. 268.

Respondent, on the other hand, argues that petitioner's IT exemption is dependent on its successful registration with the CDA. Citing the Supreme Court's Decision in *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA), et al. v. The Secretary, Department of Interior and Local Government, et al.*[23] **(PHILRECA)** and *City of Iriga v. Camarines Sur III Electric Cooperative, Inc.*[24] **(CASURECO III)**, respondent contends that, even assuming that petitioner's exemption was restored, it was already subject to IT after the 30^{th} year of its registration *per* Section 39 of PD 269. Respondent further argues that the imposition of compromise penalties was proper in this case.

RULING OF THE COURT

After a careful review of the records and the parties' contrasting arguments, the Court finds the present petition impressed with merit.

To recall, Section 12 of RA 10531 states:

> ...
>
> **Sec. 12.** Section 32 of Presidential Decree No. 269, as amended, is hereby further amended to read as follows:
>
> SEC. 32. *Registration of All Electric Cooperatives.* – All electric cooperatives may choose to remain as a non-stock, non-profit cooperative or convert into and register as: (a) a stock cooperative under the CDA; or (b) a stock corporation under the SEC, in accordance with the guidelines to be included in the IRR of this Act.
>
> Such choice shall carry with it the attendant requirements of compliance with the laws and regulatory guidelines governing the respective government agencies having jurisdiction over their registration.
>
> ...
>
> **Electric cooperatives which register with the CDA shall continue to enjoy the benefits under this Act.**
>
> Existing electric cooperatives may likewise opt to register as stock corporations with the SEC; *Provided, however,* That electric

23 G.R. No. 143076, 10 June 2003.
24 G.R. No. 192945, 05 September 2012.

> cooperatives registered with the SEC shall no longer enjoy the incentives provided for in this Act.[25]
>
> ...

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

If an EC elects the first option, it may remain a non-stock, non-profit entity governed by the provisions of PD 269, as amended by RA 10531. However, it will not be entitled to the incentives under RA 6939.[26]

If the EC chooses the second option, it shall be required to convert into a stock corporation. The enjoyment of the incentives under RA 6939 shall thus be dependent on its successful registration with the CDA. Regardless of the CDA registration, such EC shall continue to enjoy the benefits of PD 269, as amended, by Section 12 of RA 10531 clearly provides.

If the EC opts for the third option, it shall be treated as a regular domestic stock corporation upon its registration with the SEC. It shall then be entitled to all the rights and powers of any stock corporation but no longer enjoy the incentives provided by PD 269, RA 10531, RA 6939, or RA 9520. Notwithstanding the ECs' choice, it will nevertheless remain subject to the NEA's regulatory power.

Respondent contends vehemently that petitioner could only enjoy the benefits under PD 269, as amended, if it registers with the CDA. In so arguing, respondent appears to be forcing petitioner to avail of the

---

25 Emphasis supplied.

26 AN ACT CREATING THE COOPERATIVE DEVELOPMENT AUTHORITY TO PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES AS INSTRUMENTS OF EQUITY, SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT, DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, RATIONALIZING GOVERNMENT POLICIES AND AGENCIES WITH COOPERATIVE FUNCTIONS, SUPPORTING COOPERATIVE DEVELOPMENT, TRANSFERRING THE REGISTRATION AND REGULATION FUNCTIONS OF EXISTING GOVERNMENT AGENCIES ON COOPERATIVES AS SUCH AND CONSOLIDATING THE SAME WITH THE AUTHORITY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

second option despite the latter's apparent disinterest in registering with the CDA and converting itself into a stock entity. As shown clearly in the records, petitioner has opted for the first option.

To clarify, Section 12 of RA 10531 provides that "[e]lectric cooperatives which register with the CDA shall continue to enjoy the benefits under this Act". Such provision, however, does not require an EC to register with the CDA as a condition precedent to enjoy the incentives on RA 10531. Any interpretation to the contrary contravenes the clear import of the law more so that, neither RA 10531, RA 6938, nor RA 9520 categorically require an EC to be registered with the CDA as a prerequisite of its continuous legal operation.

Furthermore, it must be pointed out that RA 6938 expressly and categorically stated that it did not amend nor repeal the provisions of PD 269. Section 127 of RA 6938 provides:

> ...
> **Sec. 127. *Repeals.*** - Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provision 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.[27]
> ...

RA 9520 further affirmed the ECs' right to remain registered with the NEA without necessarily registering with the CDA. Section 18 of RA 9520 states:

> ...
> **SEC. 18.** A new Chapter on Electric Cooperatives shall be inserted and shall read, as follows:
>
> **CHAPTER XVII**
> **ELECTRIC COOPERATIVE**
>
> ...

[27] Emphasis supplied.

> ART. 130. *Registration Options of Electric Cooperatives.* - Electric Cooperatives registered with the National Electrification Administration (NEA) under Presidential Decree No. 269, as amended which opt not to register with the Authority are allowed to retain the word 'cooperative' in their registered names: *Provided*, That they shall not be entitled to the benefits and privileges under this Code.

...

As regards respondent's reliance on the cases of *PHILRECA* and *CASURECO III*, We find the same misplaced. For one, both cases were promulgated prior to RA 10531's enactment. Second, We also find the issues raised therein not in all fours with the case at bar.

A review of *PHILRECA* would reveal that the issues therein were about the difference in local tax treatment between ECs covered under PD 269 and those covered under RA 6938 since according to Section 193[28] of the Local Government Code (**LGC**) of 1991, previous exemptions enjoyed by various organization from payment of local taxes were withdrawn "except for (a) local water districts; (b) cooperatives duly registered under RA 6938; and, (c) non-stock and non-profit hospitals and educational institutions". In finding that there was no violation of the equal protection clause, the Supreme Court explained that the difference in treatment was proper since ECs registered with CDA were obliged to make capital contributions as with other similarly registered cooperatives. No such capital contribution is required of ECs registered under the provisions of PD 269.

Similarly, *CASURECO III* involved payment of local franchise taxes imposed by Section 137[29] of the LGC of 1991. Consistent with its ruling in PHILRECA, the Supreme Court ruled that Section 193 of the LGC of 1991 validly withdrew the local tax exemption of cooperatives

---

[28] **Sec. 193.** *Withdrawal of Tax Exemption Privileges.* – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code..

[29] **Sec. 137.** *Franchise Tax.* - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

which were not registered with the CDA such as ECs which remained registered under PD 269.

Unlike in *PHILRECA* and *CASURECO III*, the present case deals with an EC's exemption from payment of national income taxes. Notwithstanding the repeal of the local tax exemption of ECs under PD 269 by the LGC of 1991, the exemption from payment of national taxes will still be in force absent any express repeal as it is well-settled in our jurisdiction that repeals of statutes by implication are not favored.[30]

As regards whether the ECs' preferential IT treatment under PD 269 still prevails, respondent does not dispute that FIRB Resolution No. 24-87[31] restored these incentives subject to certain limitations such as, "[t]hat 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". Therefore, it would appear that the said resolution restored ECs' IT exception but nevertheless made income gained from their electric service operations taxable.

Whether or not this conditional restoration of petitioner's tax incentives still obtains, a review of subsequent laws affecting ECs must be made.

To reiterate Section 127 of RA 6938 provides that all other laws inconsistent with its provisions are considered repealed and that nothing in its provisions shall constitute a repeal or amendment of PD 269. The repealing clause of RA 10531 provides:

> ...
> **Sec. 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.
> ...

---

30 *Antonio A. Mecano v. Commission on Audit*, G.R. No. 103982, 11 December 1992.
31 Supra at p. 4.

RA 10531 is essentially an amendment of the provisions of PD 269. Although several amendments were made to PD 269, Section 39 of the decree which granted IT exemption to ECs was retained. Considering the above repeals, it would appear that the conditional restoration of an ECs' IT exemption made by FIRB Resolution No. 24-87 was already disregarded in favor of fully restoring the benefits of ECs under PD 269. The rule or principle of contemporaneous construction in statutory construction supports such inclusion.

In Revenue Memorandum Circular (**RMC**) No. 72-2003[32], the BIR itself affirmed the unqualified IT exemption of ECs. The said circular provides:

> ...
>
> A. Electric Cooperatives (ECs) registered with the National Electrification Administration (NEA) are exempt from:
>
> 1. Franchise tax under Section 119 of the Tax Code of 1997 (BIR Ruling No. DA-250-03 dated July 31, 2003);
>
> 2. Value-Added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity [Sec. 109(s) of the Tax Code of 1997];
>
> 3. **Income taxes for which they are directly liable** [P.D. No. 269, Sec. 39 (a)(1)];
>
> 4. All National Government taxes and fees, including franchise, filing, recordation, license or permit fees or taxes. Provided, however, that the said exemption shall end on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs. Provided further, that the period of exemption for a new cooperative formed by consolidation, as provided in Section 29 of P.D. No. 269, 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 P. D. No. 269 [P.D. No. 269, Sec. 39(a)(2)]; and

[32] Tax implications of Electric Cooperatives registered with the National Electrification Administration and Cooperative Development Authority.

> 5. Three Percent (3%) Percentage Tax under Sec. 116 of the Tax Code of 1997.[33]
>
> ...

This treatment of ECs is further reflected in NEA Legal Advisory No. 18[34] wherein the NEA affirmed that ECs registered with it are still exempt permanently from the payment of income taxes, maintaining the effectivity of Section 39 of PD 269. In the *Lim Hoa Ting v. Central Bank of the Philippines*[35], the Supreme Court explained the persuasive authority of contemporaneous construction in this wise:

> ...
>
> The practice and interpretive regulations by officers, administrative agencies, departmental heads and other officials charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of a statute.
>
> In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who are called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect.
>
> ...
>
> Another reason why contemporaneousness is an important factor is its bearing on the need for certainty and predictability in our tax laws. This is where the notion of the Court's function in the scheme of judicial tax administration, becomes important. A statute is enacted. A regulation is issued. It will, in the normal course of events, be five or six years, and very likely more, before the construction of the statute, in the light of the regulation, will come before the Supreme Court. In the meantime, people will go on living, and transactions will be conducted under the statute, perhaps all the transactions that are ever to be conducted under the statute. Thus, it seems that a strong argument can be conducted in favor of giving very heavy weight to a contemporaneous regulation, so that taxpayers may rely upon it and have some certainty that it will be followed by the courts. ...
>
> ...

---

33 Emphasis supplied.

34 Income Tax Exemption of Electric Cooperatives Organized under P.D. 269.

35 G.R. No. L-10666, 24 September 1958; Citations omitted.

The BIR's and NEA's conclusions are highly persuasive as they are consistent with RA 6938 insofar as it affirms continuous effectivity of the provisions of PD 269 as observed from Section 127 thereof and Section 122 of the same law (which seeks to harmonize the provisions of RA 6938 and PD 269), to wit:

> ...
>
> CHAPTER XVII
> Final Provisions
>
> **Sec. 122.** ***Electric Cooperatives.*** - Electric cooperatives shall be covered by this Code. However, there shall be a transition period of three (3) years within which the Cooperative Development Authority and the National Electrification Administration shall help and assist electric cooperatives to qualify under this Code. The Cooperative Development Authority and the National Electrification Administration shall jointly promulgate rules and regulations to the end that the provisions of this law are harmonized with the provisions of Presidential Decree No. 269.
>
> ...

The subsequent enactment of RA 10531 further reinforces the legislative intent to maintain the efficacy of the provisions of PD 269.

Considering that PD 269 remains in full effect, what thus remains for resolution is whether petitioner continues to enjoy the benefits that the decree affords. To reiterate, Section 39(a) of PD 269 provides for the following tax incentives:

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

> exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: *Provided*, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree.[36]

...

Respondent contends that assuming that petitioner is not required to register with the CDA, it would still not be entitled to a further exemption from payment of income taxes since thirty (30) years have already elapsed from the time it was organized or established in 1968.

A cursory reading of the above provision clearly reveals that petitioner as an EC is provided two (2) types of benefits under PD 269. *First,* it is entitled to a permanent exemption from payment of income taxes during its existence. *Second,* it is exempted from payment of all national and local taxes, fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, as well as duties or imposts on importation of materials for its operations for a period of ending on 31^{st} day of the December of the 30^{th} year after the date of its organization or when it shall be completely free of indebtedness, whichever comes first.

As petitioner argues, the first exemption is permanent in character while the second exemption is merely temporary. Petitioner's observations are accurate.

The first exemption is not dependent on any condition other than an EC's legal existence hence, the exemption stands as long as petitioner legally operates. The word "permanent" in Section 39(a) of PD 269 must be understood in its regular usage. It is elementary in statutory construction that "words should be construed in their ordinary and usual meaning".[37] Such rule of interpretation goes hand in hand with the

---

[36] Emphasis supplied.

[37] *Alfredo T. Romualdez v. The Honorable Sandiganbayan (Fifth Division), et al.*, G.R. No. 152259, 29 July 2004.

principle of *generalia verba sunt generaliter intelligenda* or "what is generally spoken shall be generally understood".

In *Atty. Reynante B. Orceo v. Commission on Elections*[38], the Supreme Court elaborated on the foregoing principle in the following wise:

> ...
>
> ... [T]he general rule in construing words and phrases used in a statute is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning; the words should be read and considered in their natural, ordinary, commonly accepted usage, and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation.
>
> ...

It is clear from the statute that the legislature did not give any special or technical definition to the word "permanent", as pertaining to an ECs' exemption from payment of IT. Thus, the same must be understood in its ordinary sense which means, "[f]ixed, enduring, abiding, not subject to change".[39]

As previously mentioned, such interpretation is supported by both RMC No. 72-2003 and NEA Legal Advisory No. 18. It is important to note that this is not the first time that this Court had occasion to rule on such matter. In CTA Case No. 6697[40] entitled *Samar-I Electric Cooperative, Inc. v. Commissioner of Internal Revenue* (**SAMELCO-I**), the First Division of this Court held:

> ...
>
> ... If the electric cooperative chose to register under the Cooperative Code, then they shall be governed by the Cooperative Code and be entitled to the benefits it carries; otherwise, they remain to be governed by PD 269. Not being governed by the Cooperative Code, it is not required to be registered with the Cooperative Development Authority in order to avail itself of the tax exemptions.

---

38 G.R. No. 190779, 26 March 2010; Citation omitted.

39 Black's Law Dictionary, Revised Fourth Edition, p. 1297.

40 Promulgated on 27 May 2008, penned by Presiding Justice Ernesto D. Acosta, concurred by Associate Justice Lovell R. Bautista (Ret.) and Associate Justice Cesar A. Casanova (Ret.); Citations omitted and emphasis in the original text.

> Anent FIRB Resolution 24-87 which restored tax incentives of electric cooperatives **except, among others, with respect to income from electric operations**; it must be remembered that the FIRB was created by Presidential Decree No. 776 on August 24, 1975. Among other things, the Board was tasked as follows:
>
> ...
>
> Initially, the FIRB only had recommendatory powers. However, EO No. 93 was issued amending PD 776; giving the FIRB, among others, the power to restore tax exemptions.
>
> Be that as it may, Resolution 24-87 cannot reign over the Cooperative Code. Resolution 24-87 is a mere resolution issued by a body created under the Office of the President; while the Cooperative Code is a statute enacted by Congress, which is the body empowered to create laws.
>
> With all the foregoing, this Court upholds the tax exemption of petitioner from MCIT. Considering this resolution, this Court will now settle only those issues related to the withholding tax liability of petitioner.
>
> ...

The above ruling was affirmed on appeal by the CTA *En Banc* in CTA EB Case Nos. 460 and 462[41] entitled *Commissioner of Internal Revenue v. Samar-I Electric Cooperative, Inc.*. The Supreme Court also affirmed the Court *En Banc's* decision in *Samar-I Electric Cooperative v. Commissioner of Internal Revenue.*[42] Although admittedly, the Supreme Court no longer tackled the issue of the *SAMELCO-I's* exemption from payment of IT in the body of the above decision, the Supreme Court's affirmance of the *En Banc's* Decision in CTA EB Case Nos. 460 and 462 lends credence to the propriety of this Court's findings.

At any rate, even in the absence of any categorical ruling by the Supreme Court on the matter, the above disquisitions still make it clear that at present, PD 269, as amended by RA 10531, is the governing law insofar as ECs are concerned.

---

[41] Promulgated on 11 March 2010.

[42] G.R. No. 193100, 10 December 2014.

As regards the imposition of compromise penalties, the Court finds the same improper in the present case. Section 6 of Revenue Regulations (**RR**) No. 12-99[43] provides:

> ...
>
> SEC. 6. *Suggested Compromise Penalty in Extra-judicial Settlement of a Taxpayer's Criminal Violation.* - Section 204 of the Tax Code of 1997 provides that, ***"All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud."*** This means that, in general, the taxpayer's criminal liability arising from his violation of the pertinent provision of the Code may be settled extra-judicially instead of the BIR instituting against the taxpayer a criminal action in Court. A compromise in extra-judicial settlement of the taxpayer's criminal liability for his violation is consensual in character, hence, may not be imposed on the taxpayer without his consent. Hence, the BIR may only suggest settlement of the taxpayer's liability through a compromise.
>
> The extra-judicial settlement of the taxpayer's criminal liability and the amount of the suggested compromise penalty shall conform with the schedule of compromise penalties provided under Revenue Memorandum Order No. 1-90 or as hereafter revised.[44]
>
> ...

Considering that the present case does not deal with the settlement of criminal liability nor any compromise for that matter, the imposition of compromise penalties would be highly irregular since no consensus among the parties were reached.

WHEREFORE, the above premises considered, the Petition for Review filed by petitioner Misamis Oriental II Rural Electric Service Cooperative, Inc. on 30 July 2019 is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ENJOINED** from collecting income tax and compromise penalties from petitioner pursuant to the Final Decision on Disputed Assessment dated 21 May 2019.

---

43 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.

44 Emphasis supplied and italics in the original text.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice