REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

NUEVA ECIJA I ELECTRIC COOPERATIVE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and REGIONAL DIRECTOR JOSEPH M. CATAPIA, in his capacity as the REGIONAL DIRECTOR OF REVENUE REGION NO. 4, CITY OF SAN FERNANDO PAMPANGA OF THE BUREAU OF INTERNAL REVENUE,
Respondents.

CTA Case Nos. 10587 & 10632

Members:

DEL ROSARIO, *P.J.*, *Chairperson*,
MANAHAN, and
REYES-FAJARDO, JJ.

Promulgated:

NOV 13 2023 9:30AM

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DECISION

DEL ROSARIO, P.J.:

This resolves the two (2) Petitions for Review seeking the cancellation and setting aside of the following:

(1) Assessment No. 23B-R301004687 demanding from petitioner the payment of deficiency income tax in the total amount of **₱39,387,367.84**, inclusive of surcharge and interest, for taxable year (TY) **2012**, and its resulting undated Warrant of Distraint and/or Levy (WDL) No. 2021-RR4-AMS-000100, subject of **CTA Case No. 10632**; and,

(2) Assessment No. 23B-14-04-011879 demanding from petitioner the payment of deficiency income tax in the total amount of **₱41,510,417.30**, inclusive of surcharge and interest, for TY **2013**, and its resulting WDL No. 2021-RR-004-AMS-000090 dated June 3, 2021, subject of **CTA Case No. 10587**.

THE PARTIES

Petitioner **NUEVA ECIJA I ELECTRIC COOPERATIVE, INC.** is a non-stock, non-profit electric cooperative duly organized by virtue of Presidential Decree (PD) No. 269, otherwise known as "The National Electrification Administration (NEA) Decree", with office address at Barangay Malapit, San Isidro, Nueva Ecija.[1] It holds a Certificate of Franchise issued by NEA on January 22, 1990, permitting it to operate an electric light and power service, as a distribution facility, in the Municipalities of Cabiao, Jaen, San Antonio, and San Isidro, and the City of Gapan, all in the Province of Nueva Ecija.[2]

Respondent **COMMISSIONER OF INTERNAL REVENUE** (CIR) is vested under pertinent laws with the authority to carry out the functions, powers, duties and responsibilities, including, among others, the power to decide disputed assessments, cancel and abate tax liabilities, and other matters, including directing to distrain and/or levy a taxpayer's properties pursuant to and in accordance with the National Internal Revenue Code (NIRC) of 1997, as amended, and other applicable tax laws.[3]

Respondent **REGIONAL DIRECTOR JOSEPH M. CATAPIA** of Revenue Region No. 4 of the Bureau of Internal Revenue is the head of the government agency falling under the control and supervision of respondent CIR, which is involved in collecting all national internal revenue taxes and other matters including the power to levy and distrain taxpayer's properties under Revenue Region No. 4.[4]

THE FACTS

TY 2012 Assessment
(CTA Case No. 10632)

On February 5, 2015, Letter of Authority (LOA) No. 23B-2015-00000001 (SN: eLA201000058923) was issued against petitioner by the OIC-Regional Director, Revenue Region No. 4, authorizing **Revenue Officer (RO) Felicitas Agustin** and **Group Supervisor (GS) Rey Lugtu** to examine the books of accounts and accounting

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[1] Pre-Trial Order, CTA Case Nos. 10587 & 10632, Docket, Vol. III, p. 1428.
[2] Exhibit "P-2", CTA Case Nos. 10587 & 10632, Docket, Vol. III, p. 1168.
[3] Pre-Trial Order, CTA Case Nos. 10587 & 10632, Docket, Vol. III, p. 1428.
[4] Pre-Trial Order, CTA Case Nos. 10587 & 10632, Docket, Vol. III, p. 1429. gm

records of petitioner for all internal revenue taxes for the period January 1 to December 31, 2012. [5]

On December 11, 2015, petitioner's general manager executed a Waiver of the Defense of Prescription in relation to respondents' examination until December 31, 2016, which was accepted by the Revenue District Officer.[6]

In an undated Memorandum addressed to the Regional Director, Revenue Region No. 4, **RO Agustin** and **GS Lugtu** recommended the issuance of a Preliminary Assessment Notice (PAN) against petitioner, finding it liable for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), fringe benefits tax (FBT), and compromise penalties for TY 2012.[7] In another undated Memorandum, **RO Agustin** and **GS Lugtu** again reiterated their recommendation for the issuance of a PAN against petitioner after conducting a reexamination of the documents the latter presented.[8]

On June 21, 2016, a PAN with Details of Discrepancies was issued against petitioner, finding it liable for deficiency income tax, VAT, EWT and compromise penalties for TY 2012.[9] Petitioner received the PAN on July 5, 2016, and filed its Reply thereto on July 19, 2016.[10]

A Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices was issued against petitioner on July 25, 2016, ordering it to pay the amounts of ₱37,803,735.12, ₱81,765,002.95, ₱26,614,444.17, and ₱50,000.00, representing deficiency income tax, VAT, EWT, and compromise penalties, respectively, inclusive of surcharge and interest.[11] The FLD and its attachments were received by petitioner on August 9, 2016.[12]

On August 18, 2016, petitioner filed its Protest to the FLD dated August 17, 2016, requesting for reinvestigation of the assessment.[13]

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[5] Exhibit "P-5", CTA Case Nos. 10587 & 10632, Docket, Vol. III, p. 1169; Exhibit "R-1", CTA Case No. 10632, BIR Records, p. 1.
[6] CTA Case No. 10632, BIR Records, p. 58.
[7] Exhibit "R-5", CTA Case No. 10632, BIR Records, pp. 180-181.
[8] Exhibit "R-5-1", CTA Case No. 10632, BIR Records, pp. 219-220.
[9] Exhibit "P-6", CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1170-1173; Exhibits "R-6" and "R-6-1", CTA Case No. 10632, BIR Records, pp. 224-226.
[10] Exhibit "P-7", CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 749-750; CTA Case No. 10632, BIR Records, pp. 304-305.
[11] Exhibit "P-8", CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1175-1183; Exhibits "R-7" to "R-9", CTA Case No. 10632, BIR Records, pp. 307-314.
[12] Exhibit "P-9", CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 760.
[13] Exhibit "P-9", CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 760-761; CTA Case No. 10632, BIR Records, pp. 520-521.

On January 16, 2017, petitioner received the Final Decision on Disputed Assessment (FDDA) dated December 27, 2016 rendered by the OIC-Regional Director, finding petitioner liable for deficiency income tax in the total amount of ₱39,387,637.84, inclusive of surcharge and interest.[14]

Petitioner sent via registered mail on February 14, 2017 a request for reconsideration of the FDDA addressed to respondent CIR.[15]

On May 5, 2017, a Preliminary Collection Letter (PCL) was issued against petitioner.[16] Thereafter, a Final Notice Before Seizure (FNBS) was issued on May 19, 2017.[17]

Because the demands for payment of deficiency income tax were left unheeded, respondent CIR, through the Regional Director, issued the assailed WDL No. 2021-RR4-AMS-000100, which petitioner received on July 27, 2021.[18]

On August 4, 2021, petitioner sent a Letter with respondent CIR requesting for the status of its request for reconsideration of the FDDA, considering that a WDL was already issued by the Regional Director.[19] Respondent, however, failed to reply.

Thus, petitioner filed via registered mail a Petition for Review on September 13, 2021, which was docketed as **CTA Case No. 10632**.[20] The case was raffled to the Court's Second Division.

On October 26, 2021, several Warrants of Garnishment were issued to various banks to garnish the deposit accounts of petitioner.[21]

On November 5, 2021, petitioner filed an Urgent Verified Motion for the Suspension of the Collection of Tax Liability, which sought the

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[14] Exhibit "P-11", CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1185-1186; Exhibit "R-11", CTA Case No. 10632, BIR Records, pp. 562-563.
[15] Exhibit "P-12", CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1187-1204; CTA Case No. 10632, BIR Records, pp. 596-613.
[16] Exhibit "R-13", CTA Case No. 10632, BIR Records, p. 581.
[17] Exhibit "R-14", CTA Case No. 10632, BIR Records, p. 615.
[18] Exhibit "P-3", CTA Case No. 10632, Docket, Vol. I, p. 48; Exhibit "R-15", CTA Case No. 10632, BIR Records, p. 686.
[19] Exhibit "P-13", CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1219-1220.
[20] CTA Case No. 10632, Docket, Vol. I, pp. 7-41.
[21] CTA Case No. 10632, BIR Records, pp. 687-702.

issuance by the Court of an order suspending the collection of taxes being undertaken by respondents.[22]

Summonses were served upon respondents and the Office of the Solicitor General (OSG) on November 17, 2021.[23]

On November 15, 2021, petitioner filed an Urgent Motion for Consolidation,[24] which the Second Division granted in a Resolution dated December 6, 2021.[25]

Respondents filed an Urgent Motion for Extension of Time to File Answer on December 16, 2021,[26] which was granted in an Order dated January 3, 2022.[27] Respondents filed their Answer via registered mail on January 28, 2022.[28]

In a Resolution dated February 23, 2022, the Court's Second Division ordered the consolidation of **CTA Case No. 10632** with **CTA Case No. 10587**,[29] pending with the First Division.

TY 2013 Assessment
(CTA Case No. 10587)

On February 5, 2015, LOA No. 23B-2015-00000002 (SN: eLA201000058922) was issued against petitioner by Conrado C. Lee, OIC-Regional Director, Revenue Region No. 4, authorizing **RO Jessie Lumba, Jr.** and **GS Lope Tubera** to examine the books of accounts and accounting records of petitioner for all internal revenue taxes for the period January 1 to December 31, 2013.[30]

On July 28, 2015, the OIC-Revenue District Officer issued a Memorandum of Assignment (MOA) designating **RO Noreen Santos** and **GS Tubera** to continue the audit of petitioner for any internal revenue taxes for TY 2013.[31]

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[22] CTA Case No. 10632, Docket, Vol. II, pp. 555-571.
[23] CTA Case No. 10632, Docket, Vol. II, p. 636.
[24] CTA Case No. 10632, Docket, Vol. II, pp. 637-643.
[25] CTA Case No. 10632, Docket, Vol. II, pp. 648-650.
[26] CTA Case No. 10632, Docket, Vol. II, pp. 651-654.
[27] CTA Case No. 10632, Docket, Vol. II, p. 656.
[28] CTA Case No. 10632, Docket, Vol. II, pp. 674-699.
[29] CTA Case No. 10632, Docket, Vol. II, pp. 660-661.
[30] Exhibit "P-15", CTA Case Nos. 10587 & 10632, Docket, Vol. III, p. 1255; CTA Case No. 10587, BIR Records, Folder 1, p. 61.
[31] CTA Case No. 10587, BIR Records, Folder 1, p. 187.

In an undated Memorandum likewise addressed to the Regional Director, **RO Santos** and **GS Lugtu** recommended the issuance of a PAN against petitioner, finding it liable for deficiency income tax and EWT for TY 2013.[32]

On September 7, 2016,[33] petitioner received a PAN dated August 30, 2016 with Details of Discrepancies, finding it liable to pay deficiency income tax, EWT and compromise penalties for TY 2013.[34] Petitioner filed its Reply to the PAN on September 21, 2016.[35]

Petitioner, through its General Manager, executed a Waiver of the Defense of Prescription on September 22, 2016, extending the examination of its books of accounts and accounting records until December 13, 2017.[36]

On October 13, 2016, petitioner received an FLD dated September 23, 2016 with Details of Discrepancies and ANs finding it liable to pay deficiency income tax, EWT and compromise penalties in the total amounts of ₱39,987,099.24, ₱24,047,118.10, and ₱50,000.00, respectively, inclusive of surcharge and interest.[37]

On November 3, 2016, petitioner filed its protest to the FLD, requesting for reinvestigation of the assessment.[38]

Petitioner received the FDDA on January 31, 2017 rendered by the OIC-Regional Director, which found the former liable for deficiency income tax of ₱41,510,417.30, inclusive of surcharge and interest.[39]

On March 2, 2017, petitioner filed with respondent CIR a request for reconsideration of the FDDA.[40]

Thereafter, a PCL was issued against petitioner on May 4, 2017.[41]

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[32] CTA Case No. 10587, BIR Records, Folder 1, pp. 213-222.
[33] CTA Case No. 10587, BIR Records, Folder 1, p. 339.
[34] Exhibits "R-18" and "R-18-1", CTA Case No. 10587, BIR Records, Folder 1, pp. 233-235.
[35] CTA Case No. 10587, BIR Records, Folder 1, p. 339.
[36] CTA Case No. 10587, BIR Records, Folder 1, pp. 342-343.
[37] Exhibit "P-16", CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1256-1262; Exhibits "R-19", "R-19-1" and "R-19-2", CTA Case No. 10587, BIR Records, Folder 1, pp. 419-424.
[38] Exhibit "P-17", CTA Case No. 10587, Docket, Vol. II, p. 842; CTA Case No. 10587, BIR Records, Folder 1, p. 427.
[39] Exhibit "P-18", CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1264-1265; Exhibit "R-20", CTA Case No. 10587, BIR Records, Folder 1, pp. 440-441.
[40] Exhibit "P-19", CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1266-1283.
[41] Exhibit "R-23", CTA Case No. 10587, BIR Records, Folder 1, p. 455.

On June 18, 2021, petitioner received the assailed WDL No. 2021-RR-004-AMS-000090 dated June 3, 2021.[42]

Petitioner sent a Letter dated July 2, 2021 addressed to respondent CIR requesting for status of its request for reconsideration of the FDDA.[43]

Unable to receive a reply to its afore-stated Letter, petitioner then filed a Petition for Review on July 14, 2021, which was docketed as **CTA Case No. 10587**.[44] The case was raffled to the Court's First Division.

Summonses were served upon respondents on September 8, 2021, and the OSG on September 13, 2021.[45]

On October 26, 2021, respondents filed their Answer.[46]

On November 5, 2021, petitioner filed an Urgent Verified Motion for the Suspension of the Collection of Tax Liability, which prayed for the issuance of an order suspending the collection efforts made by respondents with respect to the subject assessment.[47] On even date, respondents filed a Motion to Defer the Transmittal of BIR Records.[48]

Petitioner filed an Urgent Motion for Consolidation on November 15, 2021.[49]

In a Resolution dated November 25, 2021, the Court granted respondents' Motion to Defer the Transmittal of BIR Records, and ordered respondents to comment on petitioner's Urgent Verified Motion for the Suspension of the Collection of Tax Liability within five (5) days from notice.[50] Thus, on December 6, 2021, respondents filed their Comment and Opposition (Re: Petitioner's Urgent Verified Motion for the Suspension of the Collection of Tax Liability).[51]

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[42] Exhibit "P-4", CTA Case No. 10587 & 10632, Docket, Vol. I, p. 37; Exhibit "R-24", CTA Case No. 10587, BIR Records, Folder 1, p. 456.
[43] CTA Case No. 10587, BIR Records, Folder 1, pp. 525-526.
[44] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 7-29.
[45] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 155-156.
[46] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 160-168.
[47] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 173-190.
[48] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 255-258.
[49] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 260-266.
[50] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 273-274.
[51] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 374-382.

A hearing via videoconference was conducted on petitioner's Urgent Verified Motion for the Suspension of the Collection of Tax Liability and Urgent Motion for Consolidation on December 9, 2021, where petitioner presented the testimony of its witness, Von Richard R. Labios.[52] In an Order issued on even date, the Court granted petitioner's Urgent Motion for Consolidation, directed the parties to appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on January 2, 2022, and set the pre-trial conference on May 19, 2022.[53] The Court noted that such hearing was already for the consolidated **CTA Case Nos. 10587** and **10632**.

Proceedings on the Consolidated Cases

On December 16, 2021, petitioner filed its Formal Offer of Evidence (In Support of the Urgent Verified Motions for the Suspension of the Collection of Tax Liability),[54] for which respondent filed his Comment (Re: Formal Offer of Evidence dated 16 December 2021) on December 17, 2021.[55]

The parties decided not to have the cases mediated by the PMC-CTA per the No Agreement to Mediate dated February 4, 2022,[56] which the Court noted in a Resolution dated March 14, 2022.[57]

On March 1, 2022, petitioner filed a Reply (To the Answer dated 15 January 2022),[58] for which respondents filed an Opposition (To Reply dated 01 March 2022) on March 22, 2022.[59]

In a Resolution dated April 19, 2022, the Court resolved to:

(1) Admit all of petitioner's offered exhibits;

(2) Grant petitioner's Urgent Verified Motion for the Suspension of the Collection of Tax Liability for **CTA Case No. 10587**, subject to the posting of surety bond in the amount of **₱22,849,770.99**;

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[52] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 392-394.
[53] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 395-401.
[54] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 410-423.
[55] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 501-502.
[56] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 505.
[57] CTA Case Nos. 10587 & 10632, Docket, Vol. I, p. 519.
[58] This pertains to respondent's Answer to the Petition for Review in CTA Case No. 10632. CTA Case No. 10632, Docket, Vol. II, pp. 662-669.
[59] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 520-523.

(3) Order the submission of documents with respect to the surety bond; and,

(4) Re-set the pre-trial conference on June 9, 2022.[60]

On May 20, 2022, petitioner filed its Compliance with attached surety bond and required documents in conformity to the Resolution dated April 19, 2022.[61]

In a Resolution dated June 1, 2022, the Court resolved to expunge from the records petitioner's Reply for being a prohibited pleading.[62]

Petitioner and respondents filed their respective Pre-Trial Briefs on June 3, 2022.[63]

The Pre-Trial Conference was held on June 9, 2022.[64]

On June 13, 2022, respondents filed their Compliance, elevating the BIR Records for the consolidated cases,[65] which the Court noted in a Minute Resolution dated June 16, 2022.[66]

On June 29, 2022, the parties filed via electronic mail an Urgent Motion for Extension of Time to File Joint Stipulation of Facts and Issues.[67]

In a Resolution dated July 1, 2022, the Court resolved to:

(1) Take note of petitioner's Compliance filed on May 20, 2022 for **CTA Case No. 10587**, and the deficiencies and exceptions to the surety bond posted by petitioner;

(2) Direct petitioner to submit a surety bond reflecting the correct amount of **₱22,849,770.99**, which is also a continuing bond, within ten (10) days from notice; and,

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[60] CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp.534-546.
[61] CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 601-671.
[62] CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 676-678.
[63] CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 679-699; pp. 983-991.
[64] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1041-1044, 1053-1059.
[65] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1061-1063.
[66] CTA Case Nos. 10587 & 10632, Docket, Vol. III, p. 1065.
[67] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1066-1070.

(3) Grant petitioner's Urgent Verified Motion for the Suspension of the Collection of Tax Liability for **CTA Case No. 10632**, subject to the posting of surety bond in the amount of **₱20,077,353.90**, which must likewise be a compliant continuing bond.[68]

The parties filed their Joint Stipulation of Facts and Issues on July 11, 2022.[69]

On July 29, 2022, the Court issued a Resolution which denied the parties' Urgent Motion for Extension of Time to File Joint Stipulation of Facts and Issues, but nevertheless admitted and approved the submitted Joint Stipulation of Facts and Issues in the interest of justice; terminated the pre-trial; and, set the initial presentation of petitioner's evidence on August 23, 2022.[70] On the same date, petitioner filed its Compliance, with attached endorsements from the surety company reflecting the amendments and correction of the details of the respective bonds.[71]

In a Resolution dated September 7, 2022, the Court noted petitioner's Compliance, and the documents attached thereto were admitted and deemed sufficient compliance with the Resolution dated July 1, 2022. Accordingly, respondents were enjoined from proceeding with the collection of deficiency taxes against petitioner during the pendency of the consolidated cases.[72]

On September 13, 2022, the Pre-Trial Order was issued.[73]

Trial of the consolidated cases ensued. Petitioner presented both documentary and testimonial evidence. It offered the testimonies of:

(1) **Von Richard R. Labios**, whose direct testimony was by way of Judicial Affidavit dated June 3, 2022,[74] and who testified that he is the OIC-General Manager of petitioner; that as an electric cooperative registered with NEA, petitioner enjoys perpetual income tax exemption by virtue of PD No. 269, as amended; that petitioner does not earn income as the excess of the its total collections from its charges are treated as savings used or utilized to pay for

[68] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1072-1075.
[69] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1076-1092.
[70] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp.1095-1096.
[71] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1097-1112.
[72] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp.1141-1143.
[73] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp.1420-1439.
[74] Exhibit "P-29", CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 702-726.

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or fund its operating expenses, programs and projects for the benefit of its member-consumer-owners; that the retroactive application of Revenue Memorandum Circular (RMC) No. 74-2013 would be prejudicial to petitioner's interest; and, that the subject WDL should be declared void because the income tax assessment is not yet delinquent; and,

(2) **Delio I. Samulde**, whose direct testimony was by way of Judicial Affidavit dated June 3, 2022,[75] and who testified that he is a certified public accountant accredited by the Bureau of Internal Revenue (BIR), Board of Accountancy and NEA; that he audited the financial statements of petitioner; and, that in his opinion, petitioner continues to be permanently exempt from income tax and by the nature of its operations, and that petitioner's total collections from its charges is treated as savings used or utilized to pay for or fund its operating expenses, programs, and projects for the benefit of its member-consumer-owners.

Petitioner filed its Formal Offer of Evidence on September 12, 2022,[76] to which respondents filed on September 19, 2022 their Comment (Re: Petitioner's Formal Offer of Evidence).[77]

In a Resolution dated November 17, 2022, the Court admitted all of petitioner's exhibits, subject to the final evaluation and appreciation of their probative value.[78]

On the other hand, respondents likewise presented both documentary and testimonial evidence. They offered the testimonies of the following witnesses:

(1) **RO Felicitas Agustin**, whose direct testimony was by way of Judicial Affidavit dated May 27, 2022,[79] and who was assigned with the examination and assessment of petitioner for TY 2012, and identified documents in relation thereto;

(2) **RO Mark Andrei D. Canlas**, whose direct testimony was by way of Judicial Affidavit dated June 3, 2022,[80] and who

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[75] Exhibit "P-30", CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 727-738.
[76] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1147-1164.
[77] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1440-1442.
[78] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1454-1455.
[79] Exhibit "R-27", CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 1032-1040.
[80] Exhibit "R-28", CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 1021-1026.

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identified the documents with regard to the collection efforts made by the BIR for the assessment covering TY 2012;

(3) **RO Ma. Luisa R. San Antonio**, whose direct testimony was by way of Judicial Affidavit dated June 2, 2022,[81] and who reviewed the tax docket of petitioner with regard to the assessment for TY 2013, and identified documents in relation thereto; and,

(4) **RO Jeanette T. Pare**, whose direct testimony was by way of Judicial Affidavit dated June 3, 2022,[82] and who identified the documents with regard to the collection efforts made by the BIR for the assessment covering TY 2013.

Respondents filed their Formal Offer of Evidence on February 14, 2023,[83] to which petitioner filed on February 27, 2023 its Comment and/or Objection (to the Respondent's Formal Offer of Evidence).[84]

In a Resolution dated April 5, 2023,[85] the Court admitted all of respondents' exhibits, subject to final evaluation and appreciation of their probative value. The Court likewise ordered the submission of the parties' respective memoranda within thirty (30) days from notice.

Respondents filed a Manifestation on May 15, 2023,[86] stating that they are adopting the arguments raised in the Answers filed before the Court as their memorandum.

Meanwhile, petitioner filed its Memorandum on May 18, 2023.[87]

In a Minute Resolution dated May 23, 2023, the Court noted respondents' Manifestation and petitioner's Memorandum, and submitted the case for decision.

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[81] Exhibit "R-29", CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 998-1004.
[82] Exhibit "R-30", CTA Case Nos. 10587 & 10632, Docket, Vol. II, pp. 1010-1015; Docket, Vol. III, pp. 1471-1475.
[83] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1478-1489.
[84] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1491-1524.
[85] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1533-1535.
[86] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1538-1540.
[87] CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1542-1618.

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THE ISSUES

The parties raised the following issues for the Court's resolution:

(1) Whether the TY 2012 WDL issued by respondents and the alleged TY 2012 income tax assessment sought to be satisfied, in the total amount of ₱39,387,367.84, inclusive of surcharge and interest, covering petitioner's TY 2012, should be declared illegal and immediately cancelled; and,

(2) Whether the TY 2013 WDL issued by respondents and the alleged TY 2013 income tax assessment sought to be satisfied, in the total amount of ₱41,510,417.30, plus surcharge and interest, covering petitioner's TY 2013, should be declared illegal and immediately cancelled.[88]

THE ARGUMENTS OF THE PARTIES

Petitioner's Arguments

Petitioner essentially argues that it is not liable for income tax for TYs 2012 and 2013 based on the following:

I. The TY 2012 and TY 2013 WDLs issued by respondents and the TY 2012 and TY 2013 income tax assessments sought to be satisfied have no basis in law. Petitioner, by the very nature of its franchise, is not liable for income tax. The TY 2012 and TY 2013 WDLs and the TY 2012 and TY 2013 income tax assessments should thus be immediately cancelled.

A. Petitioner is a non-stock, non-profit electric cooperative duly organized under PD No. 269 and enjoys permanent exemption from income taxes.

B. It is a state policy to exempt from income tax organizations which do not operate for profit and are owned and operated exclusively for the benefit of its member-consumer-owners. Thus, cooperatives, whether registered with the Cooperative Development Authority (CDA) or NEA, enjoy tax incentives.

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[88] Pre-Trial Order, CTA Case Nos. 10587 & 10632, Docket, Vol. III, p. 1429.

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C. Petitioner does not earn any taxable income because the excess of its total collections from its charges are not treated as revenue but as savings used or utilized to pay or fund its operating expenses, programs and projects for the benefit of its member-consumer-owners.

D. The retroactive application to petitioner of RMC No. 74-2013 and BIR Ruling No. 398-2013 dated November 4, 2013, finding Marinduque Electric Cooperative, Inc. subject to income tax (*MARELCO* Ruling) is contrary to law.

E. RMC No. 74-2013 and the *MARELCO* Ruling are contrary to law and to the fundamental policy of the State to promote the viability and growth of all cooperatives as instruments for social justice and economic development.

F. Assuming *arguendo* that petitioner is subject to income tax, respondents' right to collect has already prescribed.

G. Even assuming that petitioner is liable for the abovementioned deficiency assessment items, it should not be held liable for any interests and surcharges.

II. The TY 2012 and TY 2013 WDLs should be cancelled because there is no basis for their issuance since the TY 2012 and TY 2013 income tax assessments are not delinquent.

III. The TY 2012 and TY 2013 income tax assessments are void for having been issued in violation of petitioner's right to due process.

A. The ROs did not follow the prescribed minimum audit procedures under Revenue Audit Memorandum Order No. 01-00.

B. The ROs did not consider petitioner's Reply to the PAN and protest for TY 2012 and TY 2013 rendering petitioner's right to present its case useless.

C. The TY 2012 and TY 2013 income tax assessments are based on presumptions which are frowned upon by law and which do not enjoy the presumption of correctness.[89]

Respondents' Counter-arguments

Respondents counter-argue that the Court has no jurisdiction over the Petition for Review assailing the TY 2012 assessment. They contend that petitioner only had thirty (30) days from receipt of the FDDA dated December 27, 2016, thus the filing of the Petition for Review on September 23, 2021, or four (4) years after receipt of the FDDA, is out of time. Respondents are of the view that, even assuming that petitioner made a timely administrative appeal of the FDDA before the CIR, such appeal was deemed denied upon the issuance of the PCL dated May 5, 2017, and petitioner failed to file a petition for review within thirty (30) days from receipt thereof. Respondents likewise argue that petitioner is not exempt from payment of income tax based on RMC No. 74-2013, which circularized the *MARELCO* Ruling of the BIR, providing that electric cooperatives registered with the NEA are subject to income tax on their electric service operations. Considering that the income tax assessment for TY 2012 has become final and executory, respondents maintain that the WDL should not be cancelled since the deficiency tax assessment is not delinquent.[90]

Anent the TY 2013 assessment, respondents reiterate their position that petitioner is not exempt from payment of income tax in accordance with RMC No. 74-2013.[91]

THE RULING OF THE COURT

After a judicious review of the facts as established by the records, and applying the applicable law on the matter, the Court finds the Petitions for Review meritorious.

The Court has jurisdiction over the consolidated cases

Before delving into the merits, the Court shall first determine whether it has jurisdiction over the consolidated cases.

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[89] Petitioner's Memorandum, CTA Case Nos. 10587 & 10632, Docket, Vol. III, pp. 1556-1558.
[90] Answer, CTA Case No. 10632, Docket, Vol. II, pp. 676-697.
[91] Answer, CTA Case Nos. 10587 & 10632, Docket, Vol. I, pp. 161-167.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – x x x
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable." (*Boldfacing supplied*)

In *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.*,[92] the Supreme Court summarized the taxpayer's options in disputing an assessment made by the BIR, to wit:

> "1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest;
>
> 2. **If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest**;
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period." (*Boldfacing supplied*)

With regard to the assessment covering TY 2012, the FLD and its attachments were received by petitioner on **August 9, 2016.** Thus, it had thirty (30) days therefrom, or until September 8, 2016, within which to file a request for reconsideration or reinvestigation. Thus, the filing of the Protest on **August 18, 2016** was timely.

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[92] G.R. No. 221780, March 25, 2019.

Thereafter, the OIC-Regional Director issued an FDDA, which respondent received on **January 16, 2017**. Within thirty (30) days from receipt of the FDDA, petitioner filed via registered mail on **February 14, 2017** a request for reconsideration addressed to respondent CIR. During the pendency of the request for reconsideration, a PCL, FNBS and the assailed WDL were then issued *sans* the decision of the CIR.

In *Light Rail Transit Authority vs. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue*,[93] the Supreme Court held that the period to file a petition for review with the Court may not be reckoned from receipt of the PCL and WDL when the same were issued pending a taxpayer's appeal of the FDDA with the CIR, *viz*.:

> "**Neither can the 30-day period for filing a petition for review be reckoned from petitioner's receipt of any of the following issuances: the Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy**. Like the Final Decision on Disputed Assessment, all of these were not final decisions on the appeal by the Commissioner of Internal Revenue. They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner. More importantly, all of these were issued on the premise that 'delinquent taxes' exist, an incorrect premise. To repeat, **the assessment was still pending appeal with the Office of the Commissioner when these issuances were made**. The Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration **all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect**." (*Boldfacing supplied*)

In this case, respondent CIR has not yet acted on petitioner's administrative appeal of the FDDA, thus the assessment may not be considered final, executory and demandable, and the collection of the alleged income tax deficiency for TY 2012 is premature.

The circumstances also show that petitioner chose to genuinely wait for the decision of the CIR when it sent a Letter to the CIR on **August 4, 2021**, requesting for the status of its request for reconsideration of the FDDA. This supports the view that petitioner exercised this option to await the CIR's action on its administrative appeal in good faith, and not as an afterthought to claim that the assessment had not yet become final, executory and demandable.

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[93] G.R. No. 231238, June 20, 2022.

Thus, contrary to respondent's contention, the thirty (30)-day period within which to file the Petition for Review with the Court should not be counted from petitioner's receipt of the FDDA or PCL.

As provided for under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, this Court's jurisdiction extends to "other matters" arising under the NIRC of 1997, as amended, to wit:

> "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; x x x" (*Boldfacing supplied*)

Section 11 of RA No. 1125, as amended, likewise provides that appeals to the Court should be made within thirty (30) days from receipt of the decision or ruling of the CIR, *viz.*:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **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." (*Boldfacing supplied*)

The Supreme Court ruled, in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[94] that "other matters" include the determination of the validity of a WDL, thus:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy**

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[94] G.R. No. 162852, December 16, 2004.

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> **issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected." (*Boldfacing supplied*)

This was affirmed in the more recent case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*,[95] where the Supreme Court held that:

> "The law expressly vests the CTA the authority to take cognizance of **'other matters' arising from the [1997] Tax Code** and other laws administered by the BIR **which necessarily includes** rules, regulations, and **measures on the collection of tax.** Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement." (*Boldfacing supplied*)

Thus, it was proper for petitioner to file the Petition for Review within thirty (30) days from receipt of the WDL to protect its interest from the premature distraint or levy of its properties. Here, petitioner received the assailed WDL on **July 27, 2021**. It had thirty (30) days therefrom, or until **August 26, 2021**, within which to file the petition for review.

The Supreme Court issued, however, Administrative Circular (AC) No. 56-2021, which ordered the physical closure of all courts in the National Capital Region (NCR) from August 2 to 20, 2021, and suspended the filing and service of pleadings and motions during such closure, which shall resume after seven (7) days from the physical reopening of the courts. Thereafter, the Court Administrator issued OCA Circular Nos. 114-2021, 119-2021, and 120-2021, and the Supreme Court issued AC No. 75-2021, which ordered the continued physical closure of all courts in NCR, except the Supreme Court, and maintained the suspension of the period for filing of pleadings and motions. Such suspension was only lifted beginning **October 20, 2021** with the issuance by the Supreme Court of AC No. 83-2021, thus the filing of pleadings and motions resumed seven (7) days from such date. The filing of the Petition for Review in **CTA Case No. 10632** on **October 21, 2021** was therefore timely, and the Court has jurisdiction to decide said case.

Anent the assessment covering TY 2013, the FLD and its attachments were received by petitioner on **October 13, 2016.** Petitioner filed its Protest within the thirty (30)-day period on **November 3, 2016**. Petitioner received the FDDA rendered by the OIC-Regional Director on **January 31, 2017**. Within thirty (30) days from receipt of the FDDA, petitioner filed on **March 2, 2017** with the

[95] G.R. No. 227049, September 16, 2020.

CIR a request for reconsideration of the FDDA. Without action by the CIR on petitioner's administrative appeal, a PCL was issued, and the assailed WDL was received by petitioner on **June 18, 2021**. Petitioner then sent a Letter dated July 2, 2021 addressed to the CIR requesting for status of its request for reconsideration of the FDDA.

Similar to the above discussion on petitioner's TY 2012 assessment, petitioner chose to genuinely wait for the CIR's decision on its administrative appeal, making the issuance of the PCL and WDL premature. Nonetheless, within thirty (30) days from receipt of the WDL on **June 18, 2021**, petitioner filed on **July 14, 2021** the Petition for Review in **CTA Case No. 10587**.

Thus, the Court has jurisdiction over the consolidated cases.

Under the current state of law, electric cooperatives registered with the NEA are subject to income tax on certain sources

Petitioner's primary argument is that the TY 2012 and 2013 income tax assessments against it are void because as an electric cooperative registered with the NEA, it enjoys *permanent income tax exemption* under Section 39(a)(1) of PD No. 269, as amended, which reads:

> "Section 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.* Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:
>
> (a) Provided that it operates in conformity with the purposes and provisions of this Decree, **cooperatives (1) shall be permanently exempt from paying income taxes**, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or

> converted under this Decree: Provided, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree. x x x" (*Boldfacing supplied*)

Verily, there are two types of tax exemptions granted to electric cooperatives under the afore-quoted provision. The first pertains to a **permanent exemption from income tax**, and the second is a **time-bound exemption** from payment of all kinds of taxes, fees and charges, which shall last until December 31 of the thirtieth (30th) year from the cooperative's organization or conversion, or until it shall become completely free from debt, whichever comes first. Here, petitioner claims exemption under the first type.

While Section 39(a)(1) of PD No. 269, as amended, is unambiguous on petitioner's tax exemption from income tax, the Court is nonetheless enjoined to examine the whole body of laws and interpret a statute, not only to be consistent with itself, but also to harmonize it with other laws on the same subject matter, as to form a complete, coherent and intelligible system.[96] The Court is mandated to look into, trace and examine other succeeding statutes concerning the income tax exemption enjoyed by electric cooperatives.

Subsequent to PD No. 269, as amended, is the enactment of **PD No. 1955**, which took effect on October 15, 1984. Section 1 thereof provides:

> "SECTION 1. The provisions of any special or general law to the contrary notwithstanding, **all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts and other charges heretofore granted to private business enterprises and/or persons engaged in any economic activity are hereby <u>withdrawn</u>**, except those enjoyed by the following:
>
> (a) Those registered by the Board of Investments under Presidential Decree No. 1789, as amended by Batas Pambansa Blg. 391, and those registered by the Export Processing Zone Authority under Presidential Decree No. 66, as amended by Presidential Decree Nos. 1449, 1776, 1776-A and 1786;
>
> (b) The copper mining industry in accordance with the provisions of LOI 1416;
>
> (c) Those covered by international agreements to which the Philippines is a signatory;

[96] *The Office of the Solicitor General (OSG) vs. The Honorable Court of Appeals and the Municipal Government of Saguiran, Lanao del Sur*, G.R. No. 199027, June 9, 2014.

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(d) Those covered by the non-impairment clause of the Constitution; and

(e) Those that will be approved by the President of the Philippines upon the recommendation of the Minister of Finance." (*Boldfacing and underscoring supplied*)

Considering that electric cooperatives were not among those named in the exception under the above-quoted provision, the income tax exemption of electric cooperatives was **withdrawn effective October 15, 1984**.

On January 8, 1986, **PD No. 2008** was issued, which **reverted the income tax exemption** of all cooperatives albeit with a deadline. Section 5(a) of said PD reads:

"SEC. 5. *Privileges of Cooperatives.* — **Cooperatives which are in good standing as certified by the BCOD/MAF shall enjoy the following privileges**:

(a) **Exemption from income and sales taxes until December 31, 1991**: *Provided*, That a substantial portion of the net income of the Cooperative is returned to members in the form of interests and/or patronage refunds: *Provided, further*, **That those cooperatives whose tax exemption privileges under this Decree have already expired shall continue to enjoy such privileges but in no case shall extension go beyond December 31, 1991**; *Provided, finally*, That the cooperative's taxable income shall mean that portion of the Cooperative's income after deducting the interest and patronage funds paid to its members;" (*Boldfacing and underscoring supplied*)

Eventually, President Corazon Aquino, who exercised legislative powers at that time,[97] issued **Executive Order (EO) No. 93** on December 17, 1986, which again **withdrew all tax and duty incentives** granted to government and private entities, subject to certain exceptions, *viz*.:

"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;

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[97] Section 6, Article XVIII, Constitution.

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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**." (*Boldfacing and underscoring supplied*)

Again, electric cooperatives were not among those named in the above-quoted exceptions; as such, the reasonable reading is that the **tax and duty exemptions of electric cooperatives were likewise withdrawn**.

Section 2 of EO No. 93 mandated the **Fiscal Incentives Review Board (FIRB)** to determine whether to restore the tax and/or duty exemptions withdrawn under the EO, and to revise the scope and coverage of the tax and/or duty exemption that may thus be restored, to wit:

"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;** x x x" (*Boldfacing supplied*)

The withdrawal of the tax exemption of electric cooperatives under EO No. 93 was not implemented in view of the issuance by President Aquino of **Memorandum Order (MO) No. 65** dated January 21, 1987, which suspended the withdrawal of tax exemption for electric cooperatives until June 30, 1987, *viz.*:

> "**The implementation of Executive Order No. 93, insofar as electric**, agricultural, irrigation and local waterworks **cooperatives are concerned, is hereby suspended until June 30, 1987.**
>
> The Fiscal Incentives Review Board, in consultation with the aforesaid cooperatives, is hereby directed to review the existing fiscal incentives to these cooperatives and to submit its report to the Office of the President on or before June 30, 1987 in accordance with Section 2 of Executive Order No. 93.
>
> This Memorandum Order shall take effect immediately." (*Boldfacing supplied*)

Thus, during the effectivity of MO No. 65, electric cooperatives were not subject to income and sales taxes until December 31, 1991, in accordance with **PD No. 2008**.

Thereafter, on July 14, 1987, by virtue of its delegated power to restore tax exemptions withdrawn by EO No. 93, the **FIRB issued Resolution No. 24-87**, which reads:

> "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** x x x, 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**: x x x.
>
> (SGD.) JAIME V. ONGPIN
> Secretary of Finance
> Chairman, FIRB" (*Boldfacing and underscoring supplied*)

With the promulgation of FIRB Resolution No. 24-87, the tax exemption granted to electric cooperatives under Section 39(a)(1) of PD No. 269, as amended, *vis-à-vis* PD No. 2008, was effectively

restored subject to the proviso that **income from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements, remain to be taxable.**

In *Ernesto M. Maceda vs. Hon. Catalino Macaraig, Jr., in his capacity as Executive Secretary, Office of the President, et al.*,[98] the Supreme Court held that **EO No. 93** constitutes a valid delegation of legislative power to the FIRB in exercising its function of determining which tax exemptions may be restored. Likewise, the Supreme Court recognized, in *Davao Oriental Electric Cooperative, Inc. vs. The Province of Davao Oriental*,[99] the validity of **FIRB Resolution No. 24-87** and applied it to said case, albeit it involved an assessment for real property tax.

On May 7, 2013, Congress enacted **RA No. 10531**, amending PD No. 269, as amended, by inserting Section 32-A, which clarified the incentives granted to electric cooperatives that comply with the financial and operating standards set by the NEA.

There is nothing, however, in Section 32-A or in other provisions of **RA No. 10531** which state that the income tax exemption of electric cooperatives under PD No. 269, as amended, has been totally reverted or restored. The rule is that tax exemptions must be clear and unequivocal. Any doubt whether a tax exemption exists is resolved against the taxpayer.[100]

In truth, the supposed permanent income tax exemption of electric cooperatives under Section 39(a)(1) of PD No. 269, as amended, which has been effectively withdrawn by subsequent legislation, was not entirely restored by FIRB Resolution No. 24-87. **Thus, at present, electric cooperatives registered with the NEA are subject to income tax with respect to income derived from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements**

In fine, the state of law as it is now confers no absolute income tax exemption privilege to petitioner.

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[98] G.R. No. 88291, May 31, 1991.
[99] G.R. No. 170901, January 20, 2009.
[100] *Philippine Long Distance Telephone Company, Inc. vs. City of Davao and Adelaida B. Barcelona, in her capacity as the City Treasurer of Davao*, G.R. No. 143867, March 25, 2003.

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Notwithstanding that petitioner is subject to income tax, the assessment for TY 2012 is void for being violative of Section 246 of the NIRC of 1997, as amended

As provided for in the FLD dated July 25, 2016, and as admitted by respondent's witness, RO Agustin, during cross-examination,[101] the basis for the income tax assessment against petitioner for TY 2012 was **RMC No. 74-2013**.

RMC No. 74-2013, which circularized the *MARELCO* Ruling, provided that electric cooperatives registered with the NEA are subject to income tax in accordance with FIRB Resolution No. 24-87, to wit:

> "For the information and guidance of all internal revenue officials, employees and others concerned, quoted hereunder is the full text of the BIR Ruling No. 398-2013 dated November 4, 2013, addressed to R.M. Veluz Accounting Firm, as follows:
>
> x x x
>
> Inasmuch as the FIRB Resolution No. 24-87 issued on June 14, 1987, which, however, expressly provides that "income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable", thus, restoring the duty and tax exemptions enjoyed by Electric Cooperatives established pursuant to PD 269 (Sec. 39) which were previously withdrawn, and that the said Resolution No. 24-87 was issued in compliance with the mandate of EO No. 93 which has been declared as a valid delegation of legislative power pursuant to the Maceda case, **there is no question that an electric cooperative established under PD 269 is entitled to the tax exemption privileges subject to the conditions stated in the FIRB Resolution**.
>
> **Accordingly, this Office opines that MARELCO's income from its electric service operations is subject to income tax.** x x x" (*Boldfacing supplied*)

Prior to the promulgation of RMC No. 74-2013, however, respondent CIR issued **RMC No. 72-2003** on October 20, 2003, which clarified the tax exemptions enjoyed by electric cooperatives registered with the NEA, *viz.*:

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[101] Transcript of Stenographic Notes ("TSN"), November 22, 2022, pp. 13-15.

"A. **Electric Cooperatives (ECs) registered with the National Electrification Administration (NEA) are exempt from**:

x x x

3. **Income Taxes** for which they are directly liable [P.D. No. 269, Sec. 39(a)(1)]; x x x" (*Boldfacing supplied*)

Thus, from the promulgation of RMC No. 72-2003 on **October 20, 2003** up until **November 25, 2013**, or prior to the issuance of RMC No. 74-2013, it was respondent CIR's position that electric cooperatives registered with the NEA are exempt from income tax, notwithstanding that FIRB Resolution No. 24-87 has been effective since **July 14, 1987**.

Section 246 of the NIRC of 1997, as amended, provides:

"SEC. 246. *Non-Retroactivity of Rulings*. - **Any revocation, modification or reversal of** any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith." (*Boldfacing supplied*)

In *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.* ("*San Roque*"),[102] the Supreme Court discussed that taxpayers who rely on a previous ruling of the CIR in good faith may not be prejudiced by its subsequent reversal, to wit:

"Under Section 246, **taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner** or this Court. **The reversal is not given retroactive effect**. This, in essence, is the doctrine of operative fact. There must, however, be a rule or ruling issued by the Commissioner that is relied upon by the taxpayer in good faith. x x x" (*Boldfacing supplied*)

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[102] G.R. Nos. 187485, 196113 & 197156, October 8, 2013.

RMC No. 72-2003 was the prevailing issuance during the whole of TY 2012 and on the date when petitioner was required to file its Final Adjustment Return or Annual Income Tax Return (FAR/AITR) on **April 15, 2013**.[103] Considering such interpretation by the CIR, petitioner cannot be faulted in not reporting any taxable income for such period. Thus, for respondents to assess petitioner for deficiency income tax based on **RMC No. 74-2013** is tantamount to its retroactive application. The reversal of RMC No. 72-2003 by RMC No. 74-2013 cannot be given retroactive effect since it would be prejudicial to petitioner.

RMC No. 72-2003 was issued by the CIR pursuant to his power to interpret other tax laws, such as Section 39(a)(1) of PD No. 269, as amended, in accordance with Section 4 of the NIRC of 1997, as amended. As an interpretative rule, RMC No. 72-2003 only aims to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Simply, it says what the statute means and refers to no single person or party in particular **but concern all those belonging to the same class which may be covered by the said rule**.[104]

Being a general interpretative rule, any construction or interpretation made under RMC No. 72-2003 redounds to the benefit of all concerned taxpayers, such as petitioner. As elucidated by the Supreme Court in *San Roque*:

> "**Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03** from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional." (*Boldfacing supplied*)

In *San Roque*, the Supreme Court held that BIR Ruling No. DA-489-03 was a general interpretative rule which can be relied on by **all** concerned taxpayers since it was requested by an agency under the Department of Finance. What more in this case where RMC No. 72-2003 was issued by the CIR himself. Effectively, RMC No. 72-2003 acts as equitable estoppel[105] on the part of the CIR that precludes him

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[103] Section 77(B), NIRC of 1997, as amended.

[104] *Association of International Shipping Lines, Inc. et al. vs. Secretary of Finance and Commissioner of Internal Revenue*, G.R. No. 222239, January 15, 2020.

[105] *Spouses Victoriano Chung and Debbie Chung vs. Ulanday Construction, Inc.*, G.R. No. 156038, October 11, 2010. "[E]quitable estoppel, arises when one, by his acts, representations or admissions or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and the other rightfully relies and acts on such beliefs so that he will be prejudiced if the former is permitted to deny the existence of such facts."

from assessing petitioner for the taxable years when such RMC was in force and effect.

Considering that the FLD for TY 2012 is based on RMC No. 74-2013, which respondents cannot invoke lest they violate Section 246 of the NIRC of 1997, as amended, the income tax assessment against petitioner is void.

Anent the FLD for TY 2013, it must be noted that RMC No. 74-2013 was issued on **November 26, 2013**. Notwithstanding that the assessment covers the whole of TY 2013, by the time petitioner had to file its FAR/AITR on **April 15, 2014**, RMC No. 74-2013 had already been effective, thus petitioner was obligated to declare any taxable income pursuant to the new interpretation made by the CIR.

Nevertheless, the subsequent discussion shows that the FLD for TY 2013 should likewise be declared void for lack of authority of the ROs to conduct the audit of petitioner.

The ROs who conducted the audit of petitioner for TY 2013 were not clothed with the proper authority

Even though not raised as an issue by the parties, the Court is not precluded in determining whether the ROs who conducted the audit of petitioner were validly authorized to do so. As the Supreme Court held in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*:[106]

> "Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case**. x x x
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> The above section is clearly worded. On the basis thereof, **the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda**. The CTA *En Banc* was likewise correct in sustaining

[106] G.R. No. 183408, July 12, 2017.

> the CTA Division's view concerning such matter." (*Boldfacing supplied*)

The law is clear and categorical that there must be a grant of authority before any RO can conduct an examination or assessment, and in the absence of such an authority, the assessment or examination is a nullity.[107] Section 6 of the NIRC of 1997, as amended, provides:

> "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: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. x x x" (*Boldfacing supplied*)

In addition, Section 13 of the NIRC of 1997, as amended, mandates that an RO assigned to audit a taxpayer's books of accounts and other accounting records may be authorized by LOA issued no less than by the Regional Director, *viz.*:

> "SEC. 13. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the Revenue Regional Director, 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." (*Boldfacing and underscoring supplied*)

Based on the foregoing provisions, it is clear that unless authorized by the CIR or his or her duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.

In *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[108] the Supreme Court ruled that a Memorandum of Assignment (MOA) cannot substitute an LOA in vesting authority to an RO to conduct the investigation of a taxpayer, *viz.*:

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[107] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[108] G.R. No. 242670, May 10, 2021.

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> "It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. **The memorandum of assignment**, referral memorandum, or any equivalent document **is not a proof of the existence of authority of the substitute or replacement revenue officer**. The memorandum of assignment, referral memorandum, or any equivalent document is **not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts**. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.
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> x x x
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> The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a **usurpation of the statutory power of the CIR or his duly authorized representative**. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, **the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives**." (*Boldfacing supplied*)

With respect to the TY 2013 assessment, it must be noted that LOA No. 23B-2015-00000002 (SN: eLA201000058922) originally authorized **RO Jessie Lumba, Jr.** and **GS Lope Tubera** to conduct the audit of petitioner. Subsequently, a MOA was issued designating **RO Noreen Santos** and **GS Tubera** to continue the audit of petitioner. In the undated memorandum recommending the issuance of the PAN, it was **RO Santos** and **GS Rey Lugtu** who were the signatories therein.

RO Santos was not named in the LOA authorizing the audit of petitioner for TY 2013, as her supposed authority only emanated from the MOA issued by the Revenue District Officer. On the other hand, **GS Lugtu** was never named in the LOA nor the MOA. **GS Lugtu** was named in LOA No. 23B-2015-00000001 (SN: eLA201000058923) for the audit of petitioner for TY 2012, but not for TY 2013.

The importance of the lack of the RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the ROs is tantamount to the absence of a LOA itself which results to a void assessment.[109] Considering that both **RO Santos** and **GS Lugtu** were not clothed with valid authority to continue the audit or investigation of petitioner for TY 2013, the resulting assessment is thus rendered void.

The assessments for TYs 2012 and 2013 violated petitioner's due process rights

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*,[110] the Supreme Court ruled that the CIR's failure to consider the taxpayer's Reply to the PAN and Protest to the FLD, and to provide an explanation why the arguments raised therein were rejected, are violative of the taxpayer's due process rights that renders the assessment void, *viz.*:

> "The facts demonstrate that **Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments**. There was clear inaction of the Commissioner at every stage of the proceedings.
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> First, **despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued**. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.
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> x x x
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> It is true **that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations,**

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[109] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.
[110] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

> **he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> Indeed, **the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process.** The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.
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> x x x
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> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.**" (*Boldfacing supplied*)

In these consolidated cases, petitioner's Reply to both the PANs for TYs 2012 and 2013, and Protests to both FLDs for TYs 2012 and 2013, contain substantive arguments that goes into the validity of the assailed assessments, *i.e.*, petitioner's alleged income tax exemption under PD No. 269, as amended, and its nature as a non-stock, non-profit cooperative not subject to income tax.

Review of the records shows that the PAN, FLD and FDDA for TY 2012 are all identical, as well as the PAN, FLD and FDDA for TY 2013. Except for certain minor adjustments in the computation of interest and elimination of assessment items already paid by petitioner, no substantial difference exists between these documents. Respondents failed to consider any of the arguments raised by petitioner in its Reply to the PANs for TYs 2012 and 2013, and the Protest to FLDs for TYs 2012 and 2013. Respondents likewise failed to provide any justification as to why petitioner's arguments in the Reply and Protest were rejected upon the issuance of the FDDAs. Thus, respondents failed to observe the due process rights of petitioner rendering the assessments for TYs 2012 and 2013 void.

In summary, the assessment against petitioner for TY 2012 is void for violating Section 246 of the NIRC of 1997, as amended, and petitioner's due process rights. On the other hand, the assessment for TY 2013 is likewise void for lack of authority of the ROs who conducted the investigation, and for violating petitioner's due process rights. ᴼᴹ

A void assessment bears no valid fruit.[111] Considering that both assessments against petitioner for TYs 2012 and 2013 are void, the resulting WDLs issued against petitioner are likewise void.

WHEREFORE, premises considered, the Petitions for Review in **CTA Case Nos. 10587** and **10632** are both **GRANTED**. Assessment No. 23B-R301004687 and its resulting Warrant of Distraint and/or Levy No. 2021-RR4-AMS-000100 covering taxable year 2012, and Assessment No. 23B-14-04-011879 and its resulting Warrant of Distraint and/or Levy No. 2021-RR-004-AMS-000090 covering taxable year 2013, are all **CANCELLED** and **SET ASIDE**.

The Resolutions dated April 19, 2022 and July 1, 2022 ordering the suspension of the collection of taxes against petitioner are hereby **MADE PERMANENT**. Accordingly, the Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency income tax assessments against petitioner for taxable years 2012 and 2013. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court, as amended.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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111 *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

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.

ROMAN G. DEL ROSARIO
Presiding Justice