REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

COOPERATIVE BANK OF BENGUET(COOPBANK), herein represented by its General Manager GERRY T. LAB-OYAN,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7141

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUN 19 2007

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DECISION

CASTAÑEDA, JR., *J*.:

Before the Court is a Petition for Review filed by petitioner after respondent failed to decide on the latter's protest on the assessment for deficiency gross receipts tax in the amount of One Million Three Hundred Seventy One Thousand Seven Hundred Twelve Pesos and Seven Centavos (P1,371,712.07) for the year 2002 within the 180-day period provided in Our Tax Code.

Borne by the records and as stipulated by both parties, the facts of the case are as follows:

Petitioner is a duly registered cooperative with the Cooperative Development Authority under and in accordance with R.A. No. 6938.[1] The purposes[2] for which petitioner is formed are as follows:

1. To carry on banking and credit services for the cooperatives;
2. To receive financial aid or loans from the Government and the Central Bank of the Philippines for and in behalf of the cooperative banks and primary cooperatives and their federations engaged in business and to supervise the lending and collection of loans;
3. To mobilize savings of its members for the benefit of the cooperative movement;
4. To act as a balancing medium for the surplus funds of cooperatives and their federations;
5. To discount bills and promissory notes issued and drawn by cooperatives;
6. To issue negotiable instruments to facilitate the activities of cooperatives;
7. To issue debentures subject to the approval and under conditions and guarantees to be prescribed by the Government;
8. To borrow money from banks and other financial institutions within the limit to be prescribed by the Authority;
9. To carry out all other functions as may be prescribed by the Authority; and
10. To perform banking and credit functions with individual(s) and/or the public in general; Provided, that the performance of any banking function shall be subject to prior approval by the Central Bank of the Philippines.

On December 3, 2003, petitioner received a letter from the OIC-Revenue District Officer of Revenue District Office (RDO) No. 9, La Trinidad, Benguet, informing it of its deficiency Gross Receipts Tax for the year 2002 in the amount of One Million Three Hundred Seventy One Thousand Seven Hundred Twelve Pesos and Seven Centavos (P1,371,712.07), inclusive of penalties.[3]

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[1] Certificate of Registration, Exhibit "A", Records, page 92.
[2] Articles of Cooperation of the Cooperative Bank of Benguet, Exhibit "A-1", Records, page 93.
[3] Petition for Review, Annex "A", Records, page 11; Joint Stipulation of Facts and Issues, Paragraph 2, page 75.

In a letter-reply to the OIC-Revenue District Officer of the RDO No. 9, La Trinidad, Benguet dated December 15, 2003, petitioner expressed disagreement with the findings of his deficiency Gross Receipts Tax.[4]

On January 28, 2004, the OIC-Revenue District Officer of the RDO No. 9, La Trinidad, Benguet, notified petitioner via letter that Revenue Memorandum Circular No. 48-91 has been amended by Revenue Regulations No. 20-01 dated November 12, 2001 and that petitioner's exemption from Gross Receipts Tax (GRT) under Sections 121-122 of the National Internal Revenue Code of 1997 (1997 Tax Code) is no longer among the listed exemptions.

On January 14, 2004, petitioner again wrote the OIC-Revenue District Officer acknowledging receipt of the latter's letter dated January 7, 2004. It restated its position that it is not liable to pay the GRT under Section 121 of the 1997 Tax Code. It, likewise, reiterated its request for the RDO No. 9, La Trinidad, Benguet, to issue a letter of termination of tax examination, tax clearance or whatever is appropriate.

On March 16, 2004, petitioner got from the OIC-Revenue District Officer, RDO No. 9, La Trinidad, Benguet, a Preliminary Assessment Notice (PAN) assessing petitioner deficiency Gross Receipts Tax for the year 2002 in the amount of One Million Three Hundred Seventy One Thousand, Seven Hundred Twelve Pesos and Eighty Three Centavos (P1,371,712.83), computed as follows:

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[4] Joint Stipulation of Facts and Issues, Paragraph 3, page 75.

Regular Income		18,273,374.00
Income from Bank Deposit, at gross of the 20% final tax		986,101.25
TOTAL		19,259,475.25
x GRT		5%
		962,973.76
Less: Payment per Percentage Tax Return		-
Deficiency Tax		962,973.76
Add: Increments		
Compromise penalties	7,500.00	
Surcharge (25%)	240,743.44	
Interest (20%)	160,495.63	408,739.07
		1,371,712.83

On May 31, 2004, the Assistant Regional Director of Revenue Region No. 2, Baguio City, found petitioner liable to pay deficiency percentage tax in the amount of One Million Three Hundred Seventy One Thousand Seven Hundred Twelve Pesos and Eighty Three Centavos (P1,371,712.83) and issued a Formal Letter of Demand and Audit Results/Assessment Notice No. 02-02-0006-PT[5], which petitioner admittedly received.

On July 8, 2004, petitioner formally filed its request for reconsideration on the findings of the Revenue District Officer that it is liable for deficiency Gross Receipts Tax.

As the one hundred eighty (180)-day period expired without the respondent deciding on the protest, petitioner filed before this Court a Petition for Review on January 31, 2004 assailing the assessment for deficiency Gross Receipts Tax.

[5] Petition for Review, Annex "F", Records, page 18.

Both parties submit the following issues[6] for the Court's decision:

1. Whether or not the Cooperative Bank of Benguet is exempted from Gross Receipts Tax;
2. Whether or not the Cooperative Bank of Benguet is exempted from all other national, city, provincial, municipal or barangay taxes of whatever name or nature.

Petitioner's arguments

Petitioner avers that it was established to operate as a cooperative bank pursuant to Republic Act (R.A.) No. 6938 or the Cooperative Code of the Philippines (Cooperative Code). Being a duly registered cooperative, it is entitled to some privileges, which include tax exemption under Article 62 of the Cooperative Code. As the legislative grant of tax exemption is clear under the said Cooperative Code, respondent erred in assessing petitioner for deficiency Gross Receipts Tax for year 2002.

Respondent's Arguments

On the other hand, respondent argues that Article 62 of the Cooperative Code provides the general rule and exemption therefrom. The general rule is that all sales or services rendered by a cooperative for non-members are subject to percentage taxes regardless of the amount of accumulated reserves and undivided net savings; and only producers, marketing and service cooperatives are exempt from the imposition of percentage taxes. Article 23(1) of the Cooperative Code enumerates and defines the different types of cooperatives. An examination of petitioner's Articles of Cooperation shows that none of its purposes would properly classify it as producers, marketing or service cooperative, based on the definition provided in Article 23(1) of the Cooperative Code.

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[6] Joint Stipulation of Facts and Issues, Records, pages 76-77.

Petitioner is considered as "bank" under Section 22 of the 1997 Tax Code and Section 3, Chapter I of Republic Act No. 8791 (otherwise known as the "General Banking Law of 2000"). Under Section 121 of the 1997 Tax Code, petitioner is liable to pay gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries. Thus, respondent contends that it correctly assessed petitioner deficiency Gross Receipts Tax on all sales or services it rendered for non-members under Article 62(3) of the Cooperative Code.

The petition is without merit.

It is undisputed that petitioner is a cooperative bank, which renders services to both members and non-members, and registered with Cooperative Development Authority. As a duly registered cooperative bank, petitioner enjoys several rights and privileges under Republic Act No. 6938 or the "Cooperative Code of the Philippines". Article 62 of R.A. No. 6938 which is specifically applicable to the situation of petitioner, states thus:

> "ARTICLE 62. *Tax and Other Exemptions.* - Cooperatives transacting business with both members and nonmembers shall not be subject to tax on their transactions to members. Notwithstanding the provisions of any or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions:
>
> (1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00) shall be exempt from all national, city, provincial, municipal or *barangay* taxes of whatever name and nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry. All tax-free importations shall not be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall

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be solidarily liable to pay twice the amount of the tax and/or duties thereon.

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

(a) Income Tax – On the amount allocated for interest on capitals: *Provided*, That the same tax is not consequently imposed on interest individually received by members;

(b) Sales Tax – On sales to nonmembers: *Provided, however,* That all cooperatives, regardless of classification, are exempt from the payment of income and sales taxes for a period of ten (10) years.

For cooperatives whose exemptions were removed by Executive Order No. 93, the ten-year period shall be reckoned from the effectivity date of said executive order. Cooperatives created after the approval of this Code shall be granted the same exemptions, the period of which shall be reckoned from the date of registration with the Authority: *Provided*, That at least twenty-five *per centum* (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds.

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

(d) Donations to charitable, research and educational institutions and reinvestment to socio-economic projects within the area of operation of the cooperative may be tax deductible.

(3) All cooperatives, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of local taxes and taxes on transactions with banks and insurance companies: *Provided*, That all sales or services rendered for nonmembers shall be subject to the applicable percentage taxes except sales made by producers, marketing or service cooperatives: *Provided, further,* That nothing in this article shall preclude the examination of the books of accounts or other accounting records of the cooperative by duly authorized internal revenue officers for internal revenue tax purposes only, after previous authorization by the Authority. xxx"

It is safe to conclude that the subject of Article 62 of the Cooperative Code are cooperatives classified as "transacting business with both members and nonmembers" and the rules relating to the tax treatment of each type of transactions are also provided. Regarding the transactions of the Cooperatives with their members, the same shall not be subject to tax. However, as to the Cooperatives' transactions with non-members, Article 62 makes a distinction, namely:

(1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten Million Pesos (P10,000,000.00) shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature (Article 62[1]);

(2) Cooperatives with accumulated reserves and undivided net savings of more than Ten Million Pesos (P10,000,000.00) shall be subject to certain taxes at the full rate (Article 62[2]);

(3) All Cooperatives, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of local taxes and taxes on transactions with banks and insurance companies, provided that all sales rendered for non-members shall be subject to the applicable percentage taxes except sales made by producers, marketing or service Cooperatives (Article 62[3]).

Article 23(1) of the Cooperative Code enumerates and defines the different types of cooperatives, namely:

a) Credit Cooperative is one which promotes thrift among its members and creates funds in order to grant loans for productive and provident purposes;
b) Consumer Cooperative is one the primary purpose of which is to procure and distribute commodities to members and nonmembers;
c) **Producers Cooperative is one that undertakes joint production whether agricultural or industrial**;

d) **Marketing Cooperative is one which engages in the supply of production inputs to members and market their products**;

e) **Service Cooperative is one which engages in medical and dental care, hospitalization, transportation, insurance, housing, labor, electric light and power, communication and other services**; and

f) Multipurpose Cooperative is one which combines two (2) or more of the business activities of these different types of cooperatives.

As correctly pointed out by respondent, an examination of petitioner's Articles of Cooperation and the amendments thereto shows that none of its purposes would properly classify it as producers, marketing or service Cooperative. The same conclusion is corroborated by the admission of petitioner that it is a duly registered Cooperative Bank and not a "service cooperative, producers cooperative nor a marketing cooperative." [7] Accordingly, petitioner is not exempt from payment of percentage taxes.

Section 121 of the 1997 Tax Code, as amended, which will apply in determining petitioner's tax liability, is hereunder quoted for ready reference, to wit:

> **SEC. 121.** ***Tax on Banks and Non-bank Financial Intermediaries.*** – There shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:
>
> (a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived:
>
> Short-term maturity (not in excess of two (2) years)
> - 5%

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[7] Joint Stipulation of Facts and Issues, Paragraph 9, Records, page 76.

> Medium-term maturity (over two (2) years but not exceeding four (4) years) - 3%
>
> Long-term maturity-
> (1) Over four (4) years but not exceeding seven (7) years - 1%
> (2) Over seven (7) years - 0%
>
> (b) On dividends – 0%
> (c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code – 5%
>
> *Provided, however,* That in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short, medium or long-term and the correct rate of tax shall be applied accordingly.
>
> Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities.

Petitioner's admission and stated purposes in its Articles of Cooperation, such as: (1) to carry on banking and credit services for the cooperatives; (2) to receive financial aid or loans from the Government and the Central Bank of the Philippines for and in behalf of the cooperative banks and primary cooperatives and their federations engaged in business and to supervise the lending and collection of loans,; and (3) to perform banking and credit functions with individual(s) and/or the public in general, clearly make it fall within the category of "banks".

The term "bank" is defined as "an institution, usually incorporated, whose business it is to receive money on deposit, cash checks or drafts, discount commercial paper, make loans, and issue promissory notes payable to bearer, known as bank notes."[8] The Honorable Supreme Court provides a similar definition that a bank is "a moneyed institute founded to facilitate the borrowing, lending and safekeeping of money and to deal in notes, bills of exchange, and credits" and "an investment company which lends out the money of its customers, collects the interest and charges a commission to both lender and borrower."[9]

From the foregoing, petitioner cannot escape liability to pay deficiency Gross Receipts Tax by invoking its alleged tax exemption under R.A. No. 6938. Our jurisprudence is replete with the rule that the law frowns against exemption from taxation. For this reason, statutes granting tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[10]

Aside from the clear taxability of its transactions to non-members, as provided in Article 62(3), the Cooperative Code itself declared its policy to comply with other laws and executive orders applicable to cooperatives.[11] The adoption of the Cooperative Code by reference makes the other laws as much a part of the said Code as if the other laws have been incorporated therein in full. Thus, the Cooperative Code should be so construed as to harmonize with, and give effect to, the other laws referred to. A construction that will render meaningless the other laws referred to is not favored.[12]

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[8] Blacks' Law Dictionary With Pronunciations, 6th ed.
[9] *Republic v. Security Credit and Acceptance Corporation*, 19 SCRA 58, No. L-20583, January 23, 1967
[10] *Mactan Cebu International Airport Authority v. Marcos*, 261 SCRA 667, G.R. No. 120082, September 11, 1996
[11] ARTICLE 119. *Compliance with Other Laws*. – xxx
(3) All other laws and executive orders applicable to cooperatives duly registered under this Code.
[12] Agpalo, Statutory Construction, 5th Edition, page 280.

As the Cooperative Code should be taken in harmony with other laws, which in the present case is the 1997 Tax Code, petitioner should be held liable to pay percentage tax under Section 121 of the 1997 Tax Code for all sales or services rendered for its non-members.

WHEREFORE, premises considered, the petition for review is hereby **DENIED.**

Accordingly, for lack of documentary evidence to disprove the correctness of the assessment, petitioner is hereby **ORDERED** a) **TO PAY** the assessment for deficiency Gross Receipts Tax in the amount of **ONE MILLION THREE HUNDRED SIXTY FOUR THOUSAND TWO HUNDRED TWELVE PESOS AND EIGHTY THREE CENTAVOS (P1,364,212.83)**, computed as follows:

Regular Income		18,273,374.00
Income from Bank Deposit, at gross of the 20% final tax		986,101.25
TOTAL		19,259,475.25
x GRT		5%
		962,973.76
Less: Payment per Percentage Tax Return		-
Deficiency Tax		962,973.76
Add:		
Surcharge (25%)	240,743.44	
Interest (20%)	160,495.63	401,239.07
		1,364,212.83

b)and in addition**, TO PAY** the delinquency interest at the rate of twenty percent (20%) per annum from the date of notice and demand until the amount is fully paid.

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However, the compromise penalty in the amount of P7,500.00 has been deleted because there was no compromise agreement entered into between petitioner and respondent, which shall serve as a basis for the imposition of a compromise penalty.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice