REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ONE NETWORK BANK, INC. (A RURAL BANK), *Petitioner,*	**CTA EB NO. 1642** **(CTA Case Nos. 8826)**
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 22 2018 11:51 a.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by One Network Bank, Inc. (A Rural Bank) [ONBI] under Sections 3(b) and 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court[1] seeking the reversal of the following:

1. May 13, 2016 Decision[2] of the CTA Third Division[3] which denied its refund or tax credit claim representing erroneously paid gross receipts tax (GRT) for calendar year 2013:

   "**WHEREFORE**, premises considered, the instant Petition for Review is hereby denied for lack of merit.

   SO ORDERED."

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[1] Petition for Review, Rollo, p. 3.
[2] Annex B, Petition for Review, Rollo, pp. 44-53.
[3] Penned by J. Ma. Belen M. Ringpis-Liban with the concurrence of J. Lovell R. Bautista and J. Esperanza R. Fabon-Victorino.

2. April 7, 2017 Resolution[4] denying petitioner ONBI's Motion for Reconsideration and Supplemental Motion for Reconsideration for lack of merit.

THE FACTS

The facts, summarized from the assailed decision and the records, are as follows:

The Parties

Petitioner ONBI is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with office address at Km. 9, Sasa, Davao City.

Respondent Commissioner of Internal Revenue (CIR), with main office at the BIR National Office Building, Agham Road, Diliman, Quezon City, is vested by law in general to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws, and in particular, decide claims for refund or tax credit of internal revenue taxes.[5]

Relevant Facts

On April 2, 1992, Republic Act (RA) No. 7353 or the Rural Bank Act of 1992 was approved by President Corazon C. Aquino and signed into law. The law was enacted to promote comprehensive rural development through the establishment of rural banking systems, thus:

> "SEC. 2. The State hereby recognizes the need to promote comprehensive rural development with the end in view of attaining a more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and in expanding productivity as a key to raising the quality of life for all, especially the under-privileged.
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> Towards these ends, the State hereby encourages and assists in the establishment of a rural banking system designed to make needed credit available and readily accessible in the rural areas on reasonable terms."

To further these ends, Sections 15 and 18 of the law extended the following tax incentives to rural banks:

[4] Annex C, Petition for Review, Rollo, pp. 54-59.
[5] May 13, 2016 Decision, Rollo, p. 45.

> "SEC. 15. All rural banks created and organized under the provisions of this Act shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges, for a period of five (5) years from the date of commencement of operations.
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> All rural banks in operations as of the date of approval of this Act shall be exempt from the payment of taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges, for a period of five (5) years from the approval of this Act.
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> SEC. 18. <u>To encourage consolidation and mergers of rural banks, if there are five (5) or more rural banks within the region that merge and consolidate within three (3) years from the enactment of this Act, the merged or consolidated entity will be given the following incentives for a period of seven (7) years</u>:
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> a. Its deposit liabilities shall be subjected to only one-third (1/3) of reserves normally required for rural banks;
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> b. Its reserve requirement can all be maintained under interest-bearing government securities but kept unencumbered with government financial institutions or the Central Bank; and
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> c. It shall have unrestricted branching right within the region, free from any assessment or surcharge required in setting up a branch but under coordination with the Central bank which will have to assess that there are qualified personnel, control and procedures to operate the branch." (*Underscoring supplied*)

On April 22, 1993, Revenue Regulations No. (RR) 16-1993 was issued to implement the RA 7353. The relevant provisions state:

> "SECTION 2. Taxes Covered by the Exemption. —
>
> A. All rural banks created and organized under the provisions of the Act and rural banks already in operation as of the date of approval thereof on April 2, 1992, shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges. (Sec. 15, R.A. 7353)
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>
> B. <u>Exemption from gross receipts tax. — All rural banks are exempt from the tax (GRT) imposed under Section 119 [now Section 121] of the NIRC, on gross receipts derived from sources within the Philippines</u>.
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SECTION 7. Period of Exemption. — All rural banks created and organized under the provisions of the Act shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax imposed under Title II of the NIRC and as specified in Section 2 (A) of these regulations for a period of five (5) years from the date of commencement of operations; while for rural banks which are already existing and operating as of the date of approval of the Act (April 2, 1992), the tax exemption shall be for a period of five (5) years reckoned from the date of such approval.

For purposes of these regulations, 'date of commencement of operations' shall be understood to mean the date when the rural bank was registered with the Securities and Exchange Commission, (*)

However, R.A. 7353 although approved on April 2, 1992, was published in the Official Gazette on May 25, 1992; hence, said Act took effect only after fifteen (15) days following its publication or on June 9, 1992, pursuant to Article 2 of the New Civil Code of the Philippines and in line with the Supreme Court decision in the case of Tañada, et al. vs. Tuvera, 146 SCRA 446.

(*) or the date when the Certificate of Authority to operate was issued by the Monetary Board of the Central Bank, whichever comes later.

xxx xxx xxx" (*Underscoring supplied*)

On January 1, 1998, the National Interval Revenue Code of 1997 (NIRC) took effect which imposed GRT on banks under Section 121 (formerly Section 119):

SEC. 121. *Tax on Banks and Non-Bank Financial Intermediaries.* - There shall be a collected 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%
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%

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> (b) On dividends 0%
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> (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%
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> *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."

On August 4, 2004, One Network Rural Bank, Inc. (ONRBI), one of the constituent rural banks of petitioner ONBI, obtained a ruling from the Bureau of Internal Revenue (BIR) which confirmed its tax-exempt status for five (5) years beginning March 23, 2004 under Section 15 of RA 7353. The delegated ruling states in pertinent part:

> "In reply thereto, please be informed that Section 15 of R.A. No. 7353, as implemented by Revenue Regulations No. 16-93 provides that —
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> > 'Sec. 15. All rural banks created and organized under the provisions of this Act shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges, for a period of five (5) years from the date of commencement of operations.'
>
> Corollarily, Section 2(B) of Revenue Regulations No. 16-93 provides that all rural banks are exempt from the tax (GRT) imposed under Section 119 of the NIRC, on gross receipts derived from sources within the Philippines.
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> SUCH BEING THE CASE, <u>since One Network Rural Bank, Inc. is an entity created and organized under R.A. No. 7353 which was issued a Certificate of Incorporation by the SEC on March 12, 2004 and a Certificate of Authority by the BSP on March 23, 2004 to operate as a rural bank, it is entitled to all the exemptions provided in Section 15 of R.A. No. 7353. Accordingly, One Network Rural Bank, Inc. is exempt from the payment of gross receipts tax under Section 121 of the Tax Code of 1997 and from the documentary stamp tax due on the sale, exchange or disposition of acquired property through mortgage foreclosure sale as was held in BIR Ruling No. 069-99 dated May 18, 1999 for a period of five (5) years reckoned from March 23, 2004</u>. (*BIR Ruling No. DA026-04 dated January 16, 2004*)
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> This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the

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> facts are different, then this ruling shall be considered null and void."[6] (*Underscoring supplied*)

On March 23, 2009, the five-year tax-exemption of ONRBI from GRT under Section 121 of the NIRC expired as discussed in August 4, 2004 BIR Ruling DA-420-04.

On August 15, 2009, two domestic banking corporations, ONRB and Rural Bank of New Corella (Davao del Norte), Inc., executed a Plan of Consolidation to unite under the name One Network Bank, Inc. (A Rural Bank) [ONBI].[7]

On August 24, 2009, the Agreement and Articles of Consolidation was executed by the constituent rural banks.[8]

On July 14, 2011, the SEC approved the Plan of Consolidation and the Agreement and Articles of Consolidation and Supplemental to the Agreement and Articles of Consolidation executed on August 24, 2009.[9] As a result, the corporate personalities of ONRBI and Rural Bank of New Corella (Davao del Norte), Inc. ceased to exist and the entire assets and liabilities of the two constituent rural banks were taken and deemed to be transferred to and vested in the consolidated bank known as One Network Bank, Inc. (A Rural Bank), the petitioner ONBI in this case.[10]

On July 14, 2011, ONBI was also registered with the Securities and Exchange Commission (SEC) under Company Registration No. CS201109703 and with the BIR under Certificate of Registration No. OCN8RC0000030265 and Tax Identification Number (TIN) 413-177-215-000.[11]

On August 17, 2011, petitioner was authorized to operate as a rural bank by the *Bangko Sentral ng Pilipinas* (BSP) pursuant to RA 7353 and Monetary Board Resolution No. 1210 dated September 2, 2010.[12]

On October 31, 2012, respondent CIR issued Revenue Memorandum Circular No. (RMC) 66-2012 on the taxation of rural banks formed through consolidation. The circular explained the background, reason and basis of its issuance in this wise:

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[6] BIR Ruling DA-420-04, August 4, 2004.
[7] May 13, 2016 Decision, Rollo, p. 45.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*

I. BACKGROUND

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In this case, certain rural banks already in existence and have previously availed of the tax incentives under RA 7353 consolidate themselves into single rural banks. Relying on Section 15 of RA 7353, these rural banks established through consolidation ("consolidated rural banks") avail of another five (5) years to be exempt from payment of internal revenue taxes, such as gross receipts tax (GRT).

However, the tax exemption may no longer be availed by consolidated rural banks for the following reasons:

First, the processes of consolidation involve existing and operating rural banks that already cater to the public. For this reason, these processes do not significantly promote the policy enunciated in RA 7353. It merely prolongs the exemption beyond the period prescribed by law, thereby depriving the government of much-needed revenues.

Second, Section 80 of the Corporation Code sets forth the effects of consolidation which includes the following:

1. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation under this Code;

2. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

3. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporation may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor liens upon the property of any of such constituent corporations shall be impaired by such merger or consolidation." (*Underscoring supplied*)

RMC 66-2012, notably stated that rural banks formed through consolidation shall *not* be entitled to the tax exemption under Section 15 of RA 7353, thus:

"II. TAXATION OF RURAL BANKS FORMED THROUGH CONSOLIDATION

Rural banks formed through consolidation ('consolidated rural banks') of existing rural banks ('constituent rural banks') shall not be entitled to the tax exemption under Section 15 of Republic Act No. 7353 in cases when the constituent rural banks previously availed of this exemption. However, should any or both the constituent rural banks not be able to enjoy the tax exemption for the entire five (5)-year period, then the consolidated rural bank shall be entitled to the exemption for the remaining period.

All other issuance inconsistent herewith are hereby repealed or modified accordingly.

xxx xxx xxx" (*Underscoring supplied*)

For taxable year 2013, petitioner ONBI filed its Monthly Percentage Tax Returns and paid GRT under Section 121 of the NIRC through the BIR's Electronic Filing and Payment System (eFPS) in the total amount of ₱141,746,110.54, broken down as follows:[13]

TAXABLE MONTH	**DATE OF FILING OF MONTHLY PERCENTAGE TAX RETURN AND PAYMENT OF GRT AMOUNT**	**AMOUNT**
January	February 25, 2013	₱ 12,482,496.81
February	March 19, 2013	11,691,024.93
March	April 24, 2013	11,339,092.56
April	May 21,2013	14,442,455.73
May	June 20, 2013	10,762,771.22
June	July 23, 2013	11,803,814.59
July	August 23, 2013	11,780,882.42
August	September 20, 2013	11,490,180.06
September	October 24, 2013	11,169,900.51
October	November 25,2013	12,445,546.97
November	December 20,2013	9,749,216.66
December	January 24, 2014	12,578,728.08
TOTAL		**₱ 141,746,110.54**

On March 21, 2014, petitioner filed an administrative claim for refund dated March 10, 2014 before BIR Revenue District Office (RDO) No. 123-Lahug, Cebu City for the refund of the amount of ₱141,746,110.54, representing payments of GRT for taxable year 2013.[14]

On May 9, 2014, petitioner received a letter from the BIR dated April 4, 2014 denying its claim for refund.[15]

[13] *Id.*, pp 45-46.
[14] *Id.*, p. 46.
[15] *Id.*, p. 46.

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Accordingly, on May 30, 2014, petitioner filed the petition with the Court *a quo*.[16]

On June 25, 2014, respondent filed an Answer and interposed the following special and affirmative defenses:[17]

1. Petitioner failed to establish its entitlement to the claimed refund and failed to properly substantiate its claim for the refund of the amount of ₱141,746,110.54, representing GRT paid in 2013;

2. Revenue Memorandum Circular (RMC) No. 66-2012 categorically provides that consolidated rural banks may not avail of the tax exemption granted under Section 15 of Republic Act (RA) No. 7353;

3. The BIR, as the administrative agency responsible for revenue collection and enforcement, in the exercise of its rule-making power can formulate rules and regulations, such as RMC No. 66-2012, in order to achieve the declared policies laid down by Congress;

4. The Court *En Banc* had previously ruled, in *One Network Rural Bank, Inc. (A Rural Bank) vs. Commissioner of Internal Revenue*,[18] that the tax exemption provided under Section 15 of RA 7353 does not cover situations arising from merger or consolidation of rural banks; and,

5. Claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

On July 3, 2014, respondent's Pre-Trial Brief was filed while petitioner's Pre-Trial Brief was filed on August 7, 2014.[19] On September 4, 2014, petitioner filed a Motion to Admit Amended Pre-Trial Brief, which was granted by the Court during the hearing on September 25, 2014.[20]

[16] *Id.*, p. 44.
[17] *Id.*, pp. 46-47.
[18] CTA EB No. 1200, August 14, 2015.
[19] May 13, 2016 Decision, Rollo, p. 47.
[20] *Id.*

On September 30, 2014, the parties subsequently filed their Joint Stipulation of Facts and Issues.[21] Thereafter, the Court issued a Pre-Trial Order on October 16, 2014, thereby terminating the pre-trial proceedings.[22]

During trial, petitioner ONBI presented its Corporate Secretary, Atty. Bambeth Mahal J. Diez, and its Accounting Head, Edwin M. Gupid, as witnesses.[23]

On December 11, 2014, petitioner then filed its Formal Offer of Evidence submitting Exhibits "P-1" to "P-38" and "P-45" to "P-46-a", inclusive of submarkings, which the Court admitted in a Resolution dated January 22, 2015.[24]

During the hearing held on March 9, 2015, respondent, through her counsel, manifested that she has no witness to present.[25]

Hence, the Court, in a Resolution dated March 17, 2015, granted the parties thirty (30) days from receipt of the same to file their respective memoranda.[26]

On May 20, 2015, the case was submitted for decision by the Court upon considering respondent's Memorandum filed on March 18, 2015 and petitioner's Memorandum filed on May 8, 2015.[27]

On May 13, 2016, the Court a quo rendered a decision which denied the refund claim for lack of merit.[28]

On June 3, 2016, petitioner ONBI filed a Motion for Reconsideration, to which the respondent CIR filed a Comment/Opposition.[29]

On December 13, 2016, counsels Du-Baladad and Associates withdrew their appearance as counsels of record with the conformity of the petitioner.[30]

On December 15, 2016, the law firm of Zambrano Gruba Caganda & Advincula entered their appearance as counsels for petitioner ONBI[31] which was noted by the Court a quo in its December 21, 2016 Minute Resolution.[32]

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[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Division Docket, Vol. 2, pp. 765-774.
[29] Division Docket, Vol. 2, pp. 775-812.
[30] Division Docket, Vol. 2, pp. 826-829.
[31] Division Docket, Vol. 2, pp. 831-833.
[32] Division Docket, Vol. 2, p. 834.

On January 20, 2017, petitioner *through its new counsels* filed an Urgent Motion for Leave to Admit Attached *Supplemental* Motion for Reconsideration.[33]

On April 5, 2017, petitioner filed a *Second* Supplemental Motion for Reconsideration.[34]

On April 7, 2017, the Court in Division, without comment from respondent, found no compelling reason to reverse its decision and, thus, denied, petitioner's motions for lack of merit.[35]

In its April 26, 2017 Resolution, the Court in Division ordered respondent to comment on the *Second* Supplemental Motion for Reconsideration.[36]

Finally, in its May 25, 2017 Resolution the Court a quo denied petitioner's *Second* Supplemental Motion for Reconsideration for lack of merit.[37]

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On May 5, 2017, petitioner ONBI filed its petition before the Court.[38]

In its June 2, 2017 Resolution, the Court ordered the respondent CIR to file a comment on the petition and the petitioner to submit an original or certified true copy of the Secretary's Certificate attached as Annex A of the Petition for Review.[39]

On June 6, 2017, petitioner filed a Manifestation submitting its petition to the Court's consideration.[40]

On June 21, 2017, petitioner filed its Compliance with attached certified true copy of the Secretary's Certificate.[41]

On June 30, 2017, the Court resolved to note the Manifestation and the Compliance filed by petitioner.[42]

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[33] Division Docket, Vol. 2, pp. 835-864.
[34] Division Docket, Vol. 2, pp. 867-876.
[35] Division Docket, Vol. 2, pp. 878-883; petitioner ONBI's new counsels Zambrano Gruba Caganda & Advincula received their copy of the resolution on May 2, 2017 based on the Notice of Resolution, Division Docket, Vol. 2, p. 877-A; see also par. 2.6, Petition for Review, Rollo, p. 4.
[36] Division Docket, Vol. 2, p. 888.
[37] Division Docket, Vol. 2, pp. 892-894.
[38] Rollo, pp. 1-38.
[39] Rollo, pp. 62-63.
[40] Rollo, pp. 64-65.
[41] Rollo, pp. 69-73.
[42] Minute Resolution, Rollo, p. 75.

On August 1, 2017, the Court issued a Resolution which gave due course to the petition without comment from the respondent and granted the parties thirty days to file their memoranda.[43]

On August 31, 2017, petitioner filed its memorandum[44] and, on September 8, 2017, respondent filed the same.[45]

On September 25, 2017, with the filing of the parties' memoranda, Court submitted the case for decision.[46]

THE ISSUES

Petitioner prays that the Court reverse and set aside the May 13, 2016 Decision and raised the following assignment of errors:[47]

1. The CTA Third Division committed reversible error when it failed to consider that the tax exemption granted by Congress in RA 7353, Section 15, first paragraph, in favor of all rural banks, regardless of how such rural banks were created, cannot be amended or superseded by RMC 6-2012, a mere administrative issuance.

2. The CTA Third Division committed reversible error when it failed to consider that the requirements for availment of tax exemption granted under Section 15 of RA 7353 are different and distinct from the requirements for availment of non-tax incentives under Section 18 of the same law.

3. The CTA Third Division committed reversible error when it failed to consider the petitioner ONBI, which was created through consolidation complies with all the qualifications of a new rural bank.

These sub-issues can be summarized into one main issue of whether the tax exemption under Section 15 of RA 7353 can extend to petitioner ONBI, a rural bank created through consolidation, which entitles it to a refund or tax credit, under Section 229 of the NIRC, of the GRT it paid for taxable year 2013.

[43] Rollo, pp. 78-79.
[44] Rollo, pp. 80-120.
[45] Rollo, pp. 122-129.
[46] Rollo, pp. 142-143.
[47] Rollo, pp. 7-8.

THIS COURT'S RULING

We deny ONBI's petition for lack of merit.

The case is not novel. The Court *En Banc* had already ruled upon the very same issues raised by the petition in a case also involving petitioner ONBI in *One Network Bank, Inc. (A Rural Bank) v. Commissioner of Internal Revenue*.[48]

In said case, the *unanimous* Court affirmed the decision of the CTA Second Division when the trial court denied ONBI's claim for refund of erroneously paid gross receipts tax (GRT) for taxable year 2012. The Court *denied* ONBI's petition for lack of merit when it construed RA 7353 in harmony with the Corporation Code and RMC 66-2012, when it held that an indefinite tax exemption is *not* the plain intent of RA 7353 and when it held that RMC 66-2012 is consistent with the RA 7353, the law it seeks to implement.

Once again, the Court is tasked to determine whether or not a consolidated rural bank created under RA No. 7353, comprised of two constituent rural banks that have previously enjoyed the five-year exemption granted under Section 15 of RA No. 7353, ought to have a fresh five-year GRT exemption.

We rule in the negative and reiterate our discussion in *One Network Bank, Inc.* case.[49]

RA 7353 must be construed in harmony with the Corporation Code, RR 16-93 and RMC 66-2012

Petitioner submits that, since it is a new juridical entity, it is therefore entitled to a fresh five-year GRT exemption under Section 15 of RA No. 7353, regardless of whether its constituent corporations have previously enjoyed the same. It further argues that the only condition set by Section 15 for entitlement to the tax exemption is that the rural bank must be created and organized under the provisions of RA No. 7353. Since, according to the petitioner, Section 15 does not make any distinction between a rural bank created and organized as a result of consolidation and a rural bank that is created and organized by other means, the omission of this distinction reveals the intention of the legislature to include consolidated rural banks in the entitlement to the tax exemption.[50]

The Court is not persuaded. *ge*

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[48] CTA EB No. 1200, August 14, 2105 penned by J. M. Ringpis-Liban, with the concurrence of all the justices.
[49] *Id.*
[50] Petitioner's Memorandum, Rollo, pp. 101-109.

The rule is that a statute should be so construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. This rule is expressed in the maxim, "*interpretare et concordare legibus est optimus interpretandi*," or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[51]

Furthermore, a construction of a statute which creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the act and will carry out the intention of Congress.[52] Therefore, in the construction of statutes, the courts begin with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle, embodied in the maxim, "*ut res magis valeat quam pereat*," that the courts should, if reasonably possible to do so without violence to the spirit and language of an act, so interpret the statute to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory.[53]

Guided by these principles of statutory construction, the Court is, thus, tasked to consider Section 15 of RA 7353 *not in isolation* but *in congruence with* Section 18 of the same law, the Corporation Code and the revenue issuances of respondent CIR on the taxation of rural banks, i.e. RR 16-93 and RMC 66-2012.

Under Section 2 the Corporation Code, a "corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence." Corporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them, supplemented by the provisions of the Corporation Code, insofar as they are applicable.[54]

Consistent with these provisions, since RA 7353 is a special law enacted to create and govern rural banks then those areas not covered in the law will be regulated by the Corporation Code. In particular, since RA 7353 does *not* explicitly state whether the five-year exemption it provides in Section 15 shall also be applicable to consolidated rural banks, Section 80(3), (4) and

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[51] *Mayor Arnulfo Natividad v. Hon. Augusto N. Felix*, G.R. No. 111616, February 4, 1994.
[52] *Asturias Sugar Central, Inc. v. Commissioner of Customs and Court of Tax Appeals*, G.R. No. L-19337, September 30, 1969.
[53] *Allied Banking Corporation v. Ordonez*, G.R. No. 82495, December 10, 1990 *citing* 50 Am Jur. Sections 366, 359, 358.
[54] Section 4, Corporation Code.

(5) of the Corporation Code, which describes one of the effects of consolidation, become relevant, as stated in RMC 66-2012:

> "**Sec. 80.** *Effects of merger or consolidation.* - The merger or consolidation shall have the following effects:
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> 1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
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> 2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;
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> 3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;
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> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and
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> 5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation. (n)" (*Underscoring supplied*)

The Court *a quo* is correct when it discussed the consequences under Section 80 of the Corporation Code once, upon consolidation, petitioner ONBI succeeds to the rights, privileges and immunities of its constituent rural banks:

> "Although the law encourages consolidation and mergers of rural banks, it did not go as far as giving a fresh tax exemption to consolidated rural banks for another five (5) years of operation other than giving incentives on reserve requirement and branching right for a period of seven (7) years.
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> In fact, by virtue of Section 80 of the Corporation Code, petitioner, as the consolidated corporation, possesses the privileges and immunities of

> the constituent corporations and is responsible for the liabilities and obligations of the latter, thus:
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> Therefore, a consolidated rural bank will possess such tax exemption as was enjoyed by its constituent rural banks. If the exemption period had not lapsed when the consolidated rural bank was formed, then it shall enjoy such exemption for the remaining period granted by RA No. 7353. However, if the constituent rural banks had already enjoyed the full period of exemption, they no longer possessed that privilege at the time of consolidation. Instead, they have become liable for taxes, which are assumed by the consolidated rural bank.
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> Respondent's interpretation in RMC No. 66-2012 of Section 15 of RA No. 7353 as it relates to consolidated rural bank is in accord with RA No. 7353 and the Corporation Code. It is therefore clear that RMC 66-2012 properly applies to petitioner. Without being in possession of the privilege of tax exemption at the time of consolidation, the constituent rural banks that formed petitioner could not have passed on such privilege. What they did have was the liability for payment of GRT, for which petitioner became responsible upon consolidation." (*Underscoring supplied*)

"Exemption is an immunity or privilege; it is freedom from a charge or burden to which others are subjected."[55] Accordingly, the tax exemption enjoyed by the constituent rural banks under Section 15 of RA 7353 could have been one of those immunities transferred to petitioner ONBI as the new corporation created upon consolidation. However, it appears that the tax exemption period had already expired before the consolidation. No more tax exemptions could, therefore, be passed on to ONBI.

Accordingly, the Court is of the view that RMC 66-2012 correctly interprets RA 7353 by harmonizing it with the relevant provisions of the Corporation Code.

An indefinite tax exemption is not the plain intent of RA 7353

Petitioner states that RMC 66-2012 is an unauthorized limitation on the tax exemption placed by an administrative agency to a statute enacted by Congress.[56] Petitioner, however, unduly focuses on an expansive interpretation of Section 15 to serve its cause but seeks to ignore the provision's *restrictive tenor* when read together with Section 18 and the general objectives of the law. As will be discussed below, RA 7353 when read as a whole does not lend itself to an interpretation where its tax exemptions

[55] *Milton Greenfield v. Bibiano L. Meer*, G.R. No. 156, September 27, 1946 citing *Florar v. Sherifan*, 137 Ind., 28; 36 N. E., 365, 369.
[56] Petition for Review, Rollo, p. 10.

can be availed of *beyond the limitations provided therein.* Such intention is plainly absent from the language of RA 7353.

"The avowed purpose of tax exemption is some public benefit or interest, which the lawmaking body considers sufficient to offset the monetary loss entailed in the grant of the exemption."[57]

The Rural Banks Act sought to "promote comprehensive rural development with the end in view of attaining equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and in expanding productivity as a key to raising the quality of life for all, especially the underprivileged" through the "establishment of rural banking system designed to make needed credit available and readily accessible." Nonetheless, a reading of the *entire* statute shows that despite the legislature's aspirations for what the law would accomplish, Congress did *not* intend the rural banks created or organized under said act to enjoy an *indefinite* tax exemption.

First, it is clear and undisputed that Section 15 limits the exemption period of rural banks from "payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges" to only five (5) years. No renewal of this term is expressly provided much less implied.

Second, Section 18 enumerates the incentives to merged and consolidated rural banks to only three (3) items, namely:

1. Its deposit liabilities shall be subjected to only one-third (1/3) of reserves normally required for rural banks;

2. Its reserve requirement can all be maintained under interest-bearing government securities but kept unencumbered with government financial institutions or the Central Bank; and,

3. It shall have unrestricted branching right within the region, free from any assessment or surcharge required in setting up a branch but under coordination with the Central bank which will have to assess that there are qualified personnel, control and procedures to operate the branch.

This enumeration is clearly limited to the three (3) expressly stated and evidently *excludes* the GRT exemption provided for in Section 15. The only inference that can be gathered from the foregoing enumeration is that the legislature, in enacting RA 7353, did *not* consider granting GRT exemption to merged and consolidated rural banks. *Expressio unius est exclusio alterius.*

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[57] *Sea-Land Service, Inc. v. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 122605, April 30, 2001.

To elaborate:

> Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *expressio unius est exclusio alterius*. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned."[58] (*Underscoring supplied*)

Had the legislature intended to include the tax exemption as an incentive to merged or consolidated rural banks, the same could have been expressly provided in RA 7353.

To reiterate, it is not disputed that petitioner ONBI is the result of the consolidation of two rural banks, i.e. ONRBI and Rural Bank of New Corella (Davao del Norte), Inc. Accordingly, it does not have the incentive of tax exemption for another five (5) years available under Section 15. Its incentives are expressly enumerated in Section 18, *which excludes the tax exemption in Section 15.*

Third, the lists of incentives in Section 18 is *limited to a period of only seven (7) years.*

Fourth, it is to be emphasized that while Section 18 grants incentives to consolidated rural banks, the same section is inapplicable to petitioner *because of its restrictive conditions*. Under Section 18, in order for the incentives to apply the following requisites must concur:

1. Five or more rural banks that consolidate or merge;
2. The constituent rural banks are located within the same region; and,
3. The merger or consolidation must have occurred within three (3) years of enactment of RA 7353.

Fifth, Section 18 also limited the period in which the incentives therein may be availed of by stating that they are only available to rural banks who merge and consolidate within three (3) years from enactment of RA 7353. Since the Rural Banks Act was enacted on April 2, 1992 the legislature, clearly, did *not* intend for the incentives to extend past 1995.

In the case at bench, petitioner's Plan of Consolidation was approved by the SEC only on July 14, 2011, therefore, the constituent rural banks consolidated only after April 2, 1995, the three-year mark from the enactment

[58] *Benjamin (Kokoy) T. Romualdez v. Hon. Simeon V. Marcelo*, G.R. Nos. 165510-33, July 28, 2006.

of RA 7353. Hence, petitioner is clearly ineligible for the incentives offered by Section 18.

The foregoing discussion demonstrates the *restrictive tenors* of Sections 15 and 18 and *patently negates* the liberal position of petitioner ONBI that the tax exemption extends to *all* rural banks *regardless* of how such rural banks were created.[59] Petitioner ONBI cannot insist upon and exploit the phrase "*all rural banks*" and yet ignore the evident restrictions placed by the law. In other words, to extend another five-year GRT exemption to newly consolidated rural banks is to defeat or circumvent the limits provided by law.

Surely, while RA 7353's objective is to encourage and assist in the establishment of rural banks, the same objective does *not* contemplate depriving the government *again* of GRT for another five years, especially when the constituent rural banks had already profited from the same.

RMC No. 66-2012 is not contrary but germane to the policy embodied in RA 7353.

Petitioner ONBI, in citing jurisprudence where the Supreme Court struck down various revenue issuances, assumes and argues that there is a conflict between the RA 7353 and RMC 66-2012. What petitioner fails to recognize, however, is that RMC 66-2012 merely brings out and implements the limitations already contained in RA 7353.

First, the subject of RMC No. 66-2012, "Taxation of Rural Banks Formed Through Consolidation", is still germane to the objectives of RA 7353. What it sought to provide is a demarcation of the extent of Section 15 when understood in the light of policy behind RA 7353 especially when read together with Section 18.

As previously discussed, the intention of RA 7353 is to limit the application of the tax exemption only to those that qualify in Section 15, which excludes rural banks created through consolidation, because those cases fall under Section 18, which grants incentives *except* the tax exemption. RMC 66-2012 merely fleshed out this intention by invoking the effects of corporate consolidation under Section 80 of the Corporation Code. This is not only a logical and harmonious construction of the provisions RA 7353 but also in keeping with another rule of interpretation that tax exemptions are construed strictly against taxpayers. Hence, tax exemptions cannot be created by mere implication but must be clearly provided by law. Non-exemption, in case of doubt, is favored.[60] ge

[59] Petitioner's Memorandum, Rollo, pp. 88-89.
[60] *Benguet Corporation v. Central Board of Assessment Appeals, et al.*, G.R. No. 100959, June 29, 1992.

Time and again it has been emphasized that laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power.[61] Taxation is the rule and exemption is the exception.[62] The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[63]

Second, if the Court were to adopt the interpretation advocated by petitioner, such *permissive* interpretation would allow the same ownership interests that held the constituent rural banks, which have previously enjoyed the five-year GRT exemption, to benefit *again* from that exemption through the creation of another rural bank by consolidation.

Surely, the petitioner is aware of the principle enunciated by the Supreme Court *En Banc* that "what cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory."[64]

In *Smart Communications, Inc. v. The City of Davao*,[65] the Supreme Court defined tax exemptions as a privilege, thus:

> "The uncertainty in the in lieu of all taxes clause in R.A. No. 7294 on whether Smart is exempted from both local and national franchise tax must be construed strictly against Smart which claims the exemption. Smart has the burden of proving that, aside from the imposed 3% franchise tax, Congress intended it to be exempt from all kinds of franchise taxes whether local or national. However, Smart failed in this regard.
>
> <u>Tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority. They can only be given force when the grant is clear and categorical. The surrender of the power to tax, when claimed, must be clearly shown by a language that will admit of no reasonable construction consistent with the reservation of the power. If the intention of the legislature is open to doubt, then the intention of the legislature must be resolved in favor of the State</u>.
>
> xxx xxx xxx
>
> xxx. <u>An exemption is an immunity or a privilege; it is the freedom from a charge or burden to which others are subjected</u>. xxx." (*Underscoring supplied; citations omitted*) Jr

[61] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005.
[62] *Quezon City and the Treasurer of Quezon City v. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008.
[63] *Sea-Land Service, Inc. v. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 122605, April 30, 2001.
[64] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, G.R. No. 166471, March 22, 2011.
[65] G.R. No. 155491, September 16, 2008.

Tested by these precepts, the Court must adhere to another holding of the Supreme Court *En Banc* which affirmed the position of the CIR denying the partial exemption of a taxpayer based on a *strict* reading of an ordinance:

> "We sustain the Commissioner of Internal Revenue; accordingly, the Court of Tax Appeals is reversed. To the extent that a refund is allowable, there is in reality a tax exemption. The rule applied with undeviating rigidity in the Philippines is that for a tax exemption to exist, it must be so categorically declared in words that admit of no doubt. No such language may be found in the Ordinance. It furnishes no support, whether express or implied, to the claim of respondent Administrator for a refund.
>
> From 1906, in *Catholic Church vs. Hastings*, to 1966, in *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs*, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*. The state of the law on the subject was aptly summarized in the *Esso Standard Eastern, Inc.* case by Justice Sanchez thus: 'The drive of petitioner's argument is that marketing of its gasoline product 'is corollary to or incidental to its industrial operations.' But this contention runs smack against the familiar rules that exemption from taxation is not favored, and that exemptions in tax statutes are never presumed. Which are but statements in adherence to the ancient rule that exemptions from taxation are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tested by this precept, we cannot indulge in expansive construction and write into the law an exemption not therein set forth. Rather, we go by the reasonable assumption that where the State has granted in express terms certain exemptions, those are the exemptions to be considered, and no more xxx."[66]

As applied in this case, RMC 66-2012 is therefore consistent with RA 7353 because, unlike petitioner ONBI's liberal standpoint, the Court cannot allow an expansive construction and write into RA 7353 an exemption not set forth therein. Rather, the Court should go by the reasonable assumption that where the State has granted in express terms certain exemptions, those are the only exemptions to be considered, and no more.

Finally, a Revenue Memorandum Circular, such as RMC 66-2012, is an administrative ruling issued by the CIR to interpret tax laws. It is widely accepted that an interpretation by the executive officers, whose duty is to enforce the law, is entitled to great respect from the courts and ordinarily controls the construction of the courts.[67] Administrative issuances have the force and effect of law. They benefit from the same presumption of validity

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[66] *Commissioner of Internal Revenue v. A.D. Guerrero*, G.R. No. L-20942, September 22, 1967.

[67] *Miguel Melendres, Jr. v. The Commission on Elections, et al.*, G.R. No. 129958. November 25, 1999.

and constitutionality enjoyed by statutes. These two precepts place a heavy burden upon any party assailing governmental regulations.[68]

Petitioner, to be sure, has not mustered enough bases to overcome its burden and successfully challenge the presumption in favor of RMC 66-2012.

In view of the foregoing, the jurisprudence relied upon by petitioner are clearly inapplicable. Petitioner ONBI, in the beginning, assumed and asked the Court whether an act of Congress such as RA 7353 can be amended or superseded by an administrative issuance such as RMC 16-2012. Such issue becomes merely apparent than real when RA 7353 is construed in harmony with the Corporation Code along with RR 16-93 and RMC 66-2012. The Court *a quo*, therefore, committed no reversible error in denying petitioner's claim for refund or tax credit of GRT paid in 2013.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The May 13, 2016 Decision and the April 7, 2017 Resolution are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[68] *Chevron Philippines, Inc. (Formerly Caltex Philippines, Inc.) v. Bases Conversion Development Authority and Clark Development Corporation, G.R. No. 173863*, September 15, 2010.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice