REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

ONE NETWORK BANK, INC. (A RURAL BANK),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1200
(CTA Case No. 8640)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAR 3 0 2016 1:18 p.m.

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RESOLUTION

For resolution is petitioner's "Motion for Reconsideration"[1] filed on September 10, 2015. Petitioner seeks reconsideration of this Court's Decision[2], promulgated on August 14, 2015, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the assailed Decision of the Second Division dated April 11, 2014, and its Resolution dated July 7, 2014, are hereby **AFFIRMED** *in toto*, and the instant petition for review is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

On September 10, 2015, petitioner filed his "Motion for Reconsideration" asking the Court *En Banc* to reconsider its Decision dated August 14, 2015 on the ground that it erred in:

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[1] *Rollo*, pp. 139-155.
[2] *Rollo*, pp. 115-133.

1. Construing Section 15 of Republic Act No. 7353 when it is a condition *sine qua non* that there be doubt or ambiguity, to which there is none;

2. Ruling that the transferable "privileges" and immunities" under Section 80(4) of the Corporation Code do not cover tax exemptions;

3. Holding that the construction of petitioner leads to an indefinite tax exemption;

4. Not ruling that RMC No. 66-2012 fails to conform to the law that it seeks to implement;

5. Applying RMC No. 66-2012 to petitioner;

6. Upholding the interpretation of respondent of RMC No. 66-2012 as it would seriously impair the long-term sustainability and viability of the rural bank industry; and

7. Upholding the interpretation of respondent of RMC No. 66-2012 as it is contrary to our constitutionally-enshrined commitment and priority to further social justice.

In a Resolution dated November 11, 2015, this Court ordered respondent to file Comment which it did so on December 9, 2015. Respondent, on the other hand, proffers the following counter-arguments:

1. The tax exemption provided by Section 15 of RA 7353 does not cover situations arising from merger or consolidation of rural banks; and

2. The process of consolidation involve existing and operating rural banks that already cater to the public, hence, these processes do not significantly promote the policy enunciated in RA 7353 but merely prolong the exemption beyond the period provided by law.

After considering the arguments of both parties, it is apparent to this Court that the arguments raised by petitioner in its Motion for Reconsideration are not new. They have been previously discussed and considered in the Decision dated April 11, 2014 and the Resolution dated July 7, 2014 of the Second Division in CTA Case No. 8640. More importantly, they have also been exhaustively studied and considered by this Court prior to rendering our Decision dated August 14, 2015.

Petitioner's entire argument from the inception of this case in the Court *a quo* is premised on the supposition that Section 15 of RA 7353 should not be construed because there is no doubt or ambiguity in the provision. However, the very existence of this case suggests the contrary, and, as such, calls for the exercise of judicial power.

The 1987 Constitution confers on the Supreme Court and other lower courts the exercise of judicial power, thus:

> "ARTICLE VIII. - JUDICIAL DEPARTMENT
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> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle **actual controversies** involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. x x x "*(Emphasis supplied)*

The exercise of judicial power by this Court, therefore, is limited to cases and controversies wherein contentions of the adverse parties are submitted to the court for adjudication. On the one hand, we have petitioner who believes that Section 15 of RA 7353 applies to all banks, regardless of whether they have been consolidated or not. On the other hand, we have respondent who believes that the very same section excludes consolidated banks and, on the strength of that belief, issued RMC 66-2012. There is an existing controversy and it is the duty of this Court to construe and end the controversy.

We find nothing persuasive in the arguments of petitioner to merit reconsideration. Contrary to what petitioner proposes, Section 15 of RA 7353 cannot exist in a vacuum without regard to the other sections of that particular law or, more importantly, independently of other existing laws.

As We have noted in the Decision:

> "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.[3] As such, in construing Section 15 of RA No. 7353, Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines, cannot be ignored."

That being said, it is indubitable that the Corporation Code, especially Section 80 thereof which describes the effects of consolidation, is applicable to petitioner. While petitioner, in its Motion for Reconsideration, admits the applicability of the provisions of the Corporation Code to it, it propounds that tax exemptions or immunity from taxation are not encompassed in the "rights, privileges, immunities, and franchises" in Section 80(4) thereof.

We disagree. In *Smart Communications, Inc. v. The City of Davao*[4], no less than the Supreme Court defined tax exemptions as a privilege, thus:

> "An exemption is an immunity or a privilege; it is the freedom from a charge or burden to which others are subjected.[5] It is the surrender of the power to tax, which 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.[6]"

As regards petitioner's assertion that the Court had "absolutely no factual or legal basis for such a sweeping premise that [p]etitioner intended to escape taxation", the very nature of this suit wherein petitioner is seeking a tax refund of gross receipts tax (GRT) paid for taxable year 2012 on the basis that it is purportedly *exempt* speaks for itself. *Res ipsa loquitur.*

As to petitioner's accusation that the Court engaged in "unsubstantiated supposition that consolidation can likewise be done limitlessly", a cursory reading of the Decision would show that it is petitioner's accusation that remains unsubstantiated. The Court merely delineated the terms and periods of exemptions and incentives of rural

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[3] *Valera v. Tuason*, 80 Phil. 823 (1948), *Corona v. Court of Appeals*, 214 SCRA 378 (1992), citing Agpalo, Statutory Construction, p. 210.
[4] *Rollo*, p. 124, citing Smart Communications, Inc. vs. The City of Davao, et.al, G.R. No. 155491, September 16, 2008.
[5] *Id.*
[6] *Id.* citing citing *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, 415 Phil. 764, 775 (2001).

banks, consolidated or otherwise, as indicated in RA 7353. Whether or not petitioner would seek to consolidate or merge with another corporation in the future for any myriad of reasons is pure speculation which the Court shall not engage in. Whether or not further consolidation will be beneficial for petitioner in the long-term despite being expensive and complex in the short-term is ultimately petitioner's own look-out in accordance with its self-determination towards profitability.

Petitioner also argues that its good faith reliance on Revenue Regulation (RR) No. 16-93 which did not include consolidated rural banks from the coverage of the five-year exemption should not work to its prejudice, and that RMC 66-2012 should not be retroactively applied to it.

Although petitioner cites a side by side comparison of Section 15 of RA 7353, Section 2 of RR 16-93 and RMC 66-2012, it is of no moment. The facts, as they stand and as found by the Court *a quo*, are that: 1) RR 16-93 was issued on April 22, 1993; 2) RMC 66-2012 was issued on October, 2012; and 3) petitioner made the actual payments of GRT on November 23, 2012, December 5, 2012, December 19, 2012, and January 24, 2013.

Regardless of petitioner's prior reliance on RR 16-93, by the time it made actual payments of GRT, RMC 66-2012 had already been issued. Petitioner has no one else to fault but itself for choosing to ignore the same.

On a final note, what petitioner describes as the Court's "cavalier reversal of the entitlement of consolidated rural banks to the five-year exemption" leading to petitioner's speculative scenario of the subsequent apocalyptic demise of the rural banking industry, is unfounded and is not backed up by evidence. While the Court laid down its legal bases for coming to its conclusions in the Decision, petitioner again chose to ignore the same.

As regards the current state of the rural banking industry, this is not one of those instances where judicial notice is mandatory under Rule 129 of the Rules of Court, to wit:

> "RULE 129. SECTION 1 . *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the

> Philippines, the laws of nature, the measure of time, and the geographical divisions."

At best, if the decay of the rural banking system is indeed public knowledge, it would be subject to discretionary judicial notice or one wherein a hearing would be necessary in accordance with Sections 2 and 3 of Rule 129 of the Rules of Court, to wit:

> "Sec. 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions. (1a)
>
> Sec. 3. *Judicial notice, when hearing necessary.* — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.
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> After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case."

Unfortunately, however, petitioner did not use any of these remedies available to it if only to prove its point. As the matter stands, the state of the rural banking system remains purely speculative and the Court cannot give weight to petitioner's contentions anchored on the same.

WHEREFORE, petitioner's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice