REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8725

Members:

DEL ROSARIO, *P.J.*,
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

SEP 21 2016 ; 1:06pm

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RESOLUTION

UY, J.:

For this Court's resolution is petitioner's **Motion for Reconsideration**, filed on May 6, 2016, with respondent's **Comment (Re: Motion for Reconsideration Dated 06 May 2016)**, filed on June 22, 2016.

Petitioner seeks reconsideration of the Court's Decision promulgated on April 18, 2016 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, in light of all the foregoing considerations, the instant Petition for Review filed by One Network Bank, Inc. (A Rural Bank) is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[2]

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[1] Docket, pp. 805-828.
[2] Docket, pp. 827-828.

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In its Motion, petitioner raises the following grounds for reconsideration:

1. To uphold the interpretation of the Commissioner of Internal Revenue (CIR) of Revenue Memorandum Circular (RMC) No. 66-2012 would be contrary to the constitutionally-enshrined commitment and priority to further social justice;

2. Contrary to the Honorable Court's Decision, merger and consolidation are not of the same class to which uniformity in taxation would apply;

3. RMC No. 66-2012 cannot revoke the provisions of RR No. 16-93;

4. RMC No. 66-2012 is inconsistent with the intention of RR No. 16-93 and all prior BIR rulings; and

5. RMC No. 66-2012 has been applied retroactively to the prejudice of the petitioner.

Petitioner asserts its right to a refund on the basis of its tax exemption under Republic Act (RA) No. 7353. According to petitioner, RA No. 7353 is an embodiment of Article XIII, Sections 1 and 2 of the 1987 Constitution[3] on priority and commitment to further social justice. It argues that the tax exemption under RA No. 7353 covers the consolidated rural banks, such as petitioner; and the issuance of RMC No. 66-2012 which states "rural banks formed through consolidation ('consolidated rural bank') of existing rural banks ('constituent rural banks') shall not be entitled to the tax exemption under Section 15 of RA No. 7353", is inconsistent with the law and with the previously issued Revenue Regulation (RR) No. 16-93.

On the other hand, respondent maintains that the exemption

[3] Article XIII, Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Section 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

given to rural banks under Section 15 of RA No. 7353 is not absolute as it is subject to the period of five (5) years. He contends that RMC No. 66-2012 did not revoke RR No. 16-93 and Section 15 of RA No. 7353, but interpreted the legislative intent of RA No. 7353. Moreover, he reiterates that there is nothing in the law which indicates that consolidated rural banks are granted tax exemption for a fresh period of five (5) years. He also alleges that RMC No. 66-2012 has not been applied retroactively to the prejudice of petitioner as it was issued in October 2012, while petitioner paid the alleged Gross Receipts Tax (GRT) on May 23, 2013.

Petitioner's Motion for Reconsideration is bereft of merit.

Under Section 15 of RA No. 7353, rural banks created and organized under the said law enjoy certain tax exemptions for a period of five (5) years from the date of commencement of operations, to wit:

> "SECTION 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.**
>
> All rural banks in operation as of the date of approval 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 approval of this Act." (Emphasis supplied)

Meanwhile, Section 18 of RA No. 7353 speaks of all the incentives for merged or consolidated rural banks, to wit:

> "SECTION 18. 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:

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

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

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." (Emphasis supplied)

The law is clear and specific. Section 15 covers the tax exemptions given to all rural banks created and organized under the said law, while Section 18 lists all the incentives specifically given to merged or consolidated rural banks. The tax exemption provision does not include consolidated rural banks. Instead, a different set of incentives was extended to merged or consolidated rural banks.

While the law encourages consolidation and mergers of rural banks, and offers incentives on reserve requirement and branching right for a period of seven (7) years, a new tax exemption is NOT one of the incentives given. If the intentions were otherwise, the same tax exemptions would have been among the enumerated incentives for consolidated rural banks.

It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others. The rule is expressed in the familiar maxim, *expressio unius est exclusio alterius*. The exemption must not be so enlarged by construction since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be intended beyond what was meant.[4]

Consequently, as a product of consolidation, petitioner cannot therefore claim the incentive of tax exemption for another five years. If at all, consolidated rural banks can claim the incentives under Section 18 of RA No. 7353, which does not include tax exemption.

As regards petitioner's contentions that RMC No. 66-2012 is void for being an encroachment of a legislative power and an exercise of an administrative legislation; that RMC No. 66-2012 is inconsistent with RR No. 16-93 and all prior BIR Rulings; or that it should be applied prospectively, the Court disagrees with the same.

The pertinent portion of RMC No. 66-2012 reads:

> II. TAXATION OF RURAL BANKS FORMED THROUGH CONSOLIDATION
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> "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."

Meanwhile, Section 7 of RR No. 16-93 provides as follows:

> "SEC. 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 corporate income 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

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[4] *Lung Center of the Philippines vs. Quezon City and Constantino P. Rosas, in his capacity as City Assessor of Quezon City*, G.R. No. 144104, June 29, 2004.

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".

As previously discussed, the tax exemption provision does not cover the consolidated rural banks. The law was further clarified when respondent issued RR No. 16-93 and RMC No. 66-2012.

From the foregoing, there is nothing in RMC No. 66-2012 that is inconsistent and incapable of reconciliation with RR No. 16-93. In fact, the two issuances are in harmony with each other and with the law being implemented. Section 7 of RR No. 16-93 simply reiterates the provision of law while RMC No. 66-2012 clarifies that the rural banks formed through consolidation shall not be entitled to the tax exemption under Section 15 of RA No. 7353 in cases when the constituent rural banks previously availed the exemption. However, should any or both the constituent rural banks were not 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.

The law categorically provides a limited period of five (5) years within which the rural banks covered by RA No. 7353 may enjoy the tax incentives. To give a different interpretation on the provision of law would result to a perpetual tax exemption of all rural banks.

Moreover, the same findings and conclusion were expressed by the CTA *En Banc* in CTA EB No. 1200[5], involving the same parties:

> "Given that RA No. 7353 is a special law to create and organize rural banks, it is indubitable that the treatment of such to the extent that it is not tackled in the Rural Banks Act itself, will be governed by the applicable provisions of the Corporation Code. As RA No. 7353 does not explicitly mandate whether or not the five-year exemption it offers in its Section 15 shall be applicable as well to consolidated rural banks, Item 4 in Section 80 thereof which describes one of the effects of consolidation becomes relevant:
>
>> 'Sec. 80. *Effects or merger or consolidation.* - The merger or consolidation shall have the following effects:
>>
>> xxx xxx xxx
>>
>> 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 . . .' *(Emphasis supplied)'*
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> An exemption is an immunity or a privilege; it is the freedom from a charge or burden to which others are subjected. 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.

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[5] *One Network Bank, Inc. (A Rural Bank) vs. Commissioner of Internal Revenue*, CTA EB No. 1200 (CTA Case No. 8640), August 14, 2015 and in Resolution dated March 30, 2016.

Included in the queue of laws to be reconciled in the matter at hand is RMC No. 66-2012, issued on October 31, 2012 , which defined the taxation of rural banks formed through consolidation. It mandated:

> '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.'

Provisions in an act which are omitted in another act relative to the same subject matter will be applied in a proceeding under the other act, when not inconsistent with its purpose. Prior statutes relating to the same subject matter are to be compared with the new provisions, and if possible, by reasonable construction, both to be construed that effect is given to every provision of each. Statutes in *pari materia,* although in apparent conflict, are as far as reasonably possible construed to be in harmony with each other. Similarly, every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimum interpretandi modus,* which means that the best method of interpretation is that which makes laws consistent with other laws.

We believe that RMC No. 66-2012 correctly interprets the Rural Banking Act because a perusal thereof shows that it harmonizes existing laws on the subject matter, and, more importantly, an examination of the statute reveals that exemption privileges for rural banks were not meant to run for an unlimited period." (Emphasis supplied)

Lastly, based on RMC No. 66-2012, the scenario when a consolidated rural bank may enjoy tax exemption is only when "any or both the constituent rural banks were not 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". In view of this, the Court reiterates its findings that petitioner failed to present evidence that will show its constituent corporations, *i.e.*, One Network Rural Bank, Inc. and Rural Bank of New Corella (Davao del Norte), Inc., have not fully availed the five (5)-year tax exemption under Section 15 of RA No. 7353, as of the period of the refund claim (September to December 2011). As such, the Court has no way of knowing whether petitioner can avail the exemption.

Again, the burden of proving entitlement to a tax refund rests on the taxpayer.[6]

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

[6] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 196415 & 196451, December 2, 2015.