REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ONE NETWORK BANK, INC. (A RURAL BANK), Petitioner,	**CTA CASE NO. 8826**
	Members:
- versus -	**BAUTISTA,** *Chairperson* **FABON- VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 13 2016 16:10 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

This case involves a Petition for Review[1] filed by One Network Bank, Inc. (A Rural Bank) on May 30, 2014 seeking the refund of the amount of One Hundred Forty One Million Seven Hundred Forty Six Thousand One Hundred Ten Pesos and 54/100 (₱141,746,110.54), allegedly representing its erroneous payment of gross receipts tax (GRT) for calendar year 2013.[2]

The Facts

Petitioner One Network Bank, Inc. (A Rural Bank) is a domestic corporation duly organized and registered under the laws of the Republic of the Philippines,

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[1] Docket, vol. I, pp. 6-26.
[2] Statement of the Case, Pre-Trial Order, docket, vol. I, p. 415.

with office address at Km. 9, Sasa, Davao City. It was registered with the Securities and Exchange Commission (SEC) on July 14, 2011, with Company Registration No. CS201109703.[3] Petitioner is also registered with the Bureau of Internal Revenue (BIR) as evidenced by its Certificate of Registration No. OCN8RC0000030265, with Tax Identification Number (TIN) 413-177-215-000.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested by law with authority to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On August 15, 2009, two domestic banking corporations, One Network Rural Bank, Inc. and Rural Bank of New Corella (Davao del Norte), Inc., executed a Plan of Consolidation[5] to consolidate under the name One Network Bank, Inc. (A Rural Bank). The Agreement and Articles of Consolidation[6] was executed by the constituent rural banks on August 24, 2009.

On July 14, 2011, the SEC approved the Plan of Consolidation dated August 15, 2009 and the Agreement and Articles of Consolidation and Supplemental to the Agreement and Articles of Consolidation executed on August 24, 2009.[7] As a result, the corporate personalities of One Network Rural Bank, Inc. 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), herein petitioner.

Petitioner was authorized to operate as a rural bank by the *Bangko Sentral ng Pilipinas* (BSP) on August 17, 2011, pursuant to Republic Act (RA) No. 7353[8] and Monetary Board Resolution No. 1210 dated September 2, 2010.[9]

For taxable year 2013, petitioner filed its Monthly Percentage Tax Returns and paid through the BIR's Electronic Filing and Payment System (EFPS) the total amount of ₱141,746,110.54, broken down as follows:[10]

[3] Exhibit "P-1", docket, vol. II, p. 463.
[4] Exhibit "P-6", docket, vol. II, p. 528.
[5] Exhibit "P-5", docket, vol. II, pp. 491-493.
[6] Exhibit "P-4", docket, vol. II, pp. 484-490.
[7] Exhibit "P-3", docket, vol. II, p. 481.
[8] An Act Providing for the Creation, Organization and Operation of Rural Banks, and for Other Purposes, otherwise known as "Rural Banks Act of 1992", signed into law on April 2, 1992.
[9] Exhibit "P-7", docket, vol. II, p. 529.
[10] Exhibits "P-10" to "P-21-a", docket, vol. II, pp. 544-579.

TAXABLE MONTH	DATE OF FILING OF MONTHLY PERCENTAGE TAX RETURN AND PAYMENT OF GRT	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-Cebu City for the refund of the amount of ₱141,746,110.54, purportedly representing its GRT paid for taxable year 2013.[11]

On May 9, 2014, petitioner received a letter from the BIR dated April 4, 2014 denying its claim for refund.[12] Thus, petitioner filed the instant petition.

In her Answer[13] filed on June 25, 2014, respondent interposed the following special and affirmative defenses: (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;[14] (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 had previously ruled, in *One Network Rural Bank, Inc. (A Rural Bank) vs. Commissioner of Internal Revenue*,[15] 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

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11 Exhibit "P-8", docket, vol. II, pp. 530-542.
12 Exhibit "P-38", docket, vol. II, p. 681.
13 Docket, vol. I, pp. 76-83.
14 The Rural Bank Act of 1992.
15 CTA Case No. 8640, April 11, 2014, which was affirmed by the CTA *en banc* in CTA EB No. 1200 on August 14, 2015.

strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

Respondent's Pre-Trial Brief[16] was filed on July 3, 2014; while petitioner's Pre-Trial Brief[17] was filed on August 7, 2014. On September 4, 2014, petitioner filed a Motion to Admit Amended Pre-Trial Brief,[18] which was granted by the Court during the hearing on September 25, 2014.[19]

Subsequently, the parties submitted their Joint Stipulation of Facts and Issues[20] on September 30, 2014. The Court issued a Pre-Trial Order[21] on October 16, 2014, thereby terminating the pre-trial proceedings.

During trial, petitioner presented its Corporate Secretary, Atty. Bambeth Mahal J. Diez,[22] and its Accounting Head, Edwin M. Gupid,[23] as witnesses. Thereafter, petitioner filed its Formal Offer of Evidence[24] on December 11, 2014, submitting Exhibits "P-1" to "P-38" and "P-45" to "P-46-a", inclusive of sub-markings; which the Court admitted in a Resolution[25] dated January 22, 2015.

On the other hand, during the hearing held on March 9, 2015, respondent, through her counsel, manifested that she has no witness to present.[26] Hence, the Court, in the Resolution[27] dated March 17, 2015, granted the parties thirty (30) days from receipt of the same to file their respective memoranda.

The case was declared submitted for decision by the Court on May 20, 2015,[28] considering respondent's Memorandum[29] filed on March 18, 2015 and petitioner's Memorandum[30] filed on May 8, 2015.

<u>The Issue</u>

The parties submitted the sole issue[31] for the Court's disposition, to wit:

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16 Docket, vol. I, pp. 87-90.
17 Docket, vol. I, pp. 92-102.
18 Docket, vol. I, pp. 388-402.
19 Docket, vol. I, p. 406.
20 Docket, vol. I, pp. 407-410.
21 Docket, vol. I, pp. 415-419.
22 Exhibit "P-46", docket, vol. II, pp. 700-709.
23 Exhibit "P-45", docket, vol. II, pp. 682-699.
24 Docket, vol. II, pp. 451-462.
25 Docket, vol. II, pp. 716-717.
26 Minutes of the Hearing, docket, vol. II, p. 720.
27 Docket, vol. II, p. 722.
28 Resolution, docket, vol. II, p. 762.
29 Docket, vol. II, pp. 723-730.
30 Docket, vol. II, pp. 738-760.
31 Pre-Trial Order, docket, vol. I, p. 416.

> Whether or not petitioner is entitled to a claim for refund in the amount of One Hundred Forty-One Million Seven Hundred Forty-Six Thousand One Hundred Ten Pesos and 54/100 (₱141,746,110.54), allegedly representing erroneous payment of gross receipts tax for taxable year 2013.

The Court's Ruling

The petition is bereft of merit.

Section 15 of RA No. 7353, as amended, provides:

> 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.
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> 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.

Based on this provision, petitioner believes that it is not liable to pay the subject GRT since the provision clearly and unequivocally grants tax exemption to "all rural banks" without any distinction as to how they were formed or created.[32] Petitioner contends that a consolidated corporation is a new corporation with a juridical personality separate and distinct from the constituent corporations which formed it. Hence, it is entitled, in its own capacity, to avail of the tax exemption privilege provided under Section 15 of RA No. 7353, notwithstanding if the two constituent rural banks have already availed of the tax exemption privilege.[33]

In contrast, respondent argues that RMC No. 66-2012 categorically provides that the tax exemption granted under Section 15 of RA No. 7353 is not available to consolidated rural banks.

RMC No. 66-2012 provides, in part:

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[32] Petitioner's Memorandum, docket, vol. II, p. 743.
[33] Petitioner's Memorandum, docket, vol. II, p. 756.

> 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.

Petitioner counters that RMC No. 66-2012, *vis-à-vis* RA No. 7353, is *ultra vires*, since it is inconsistent with RA No. 7353, deviating from the intent and spirit of the statute, and erroneously applied Section 80 of the Corporation Code. [34] Thus, for failing to conform to the law it seeks to implement, RMC No. 66-2012 is invalid.[35]

Contrary to petitioner's argument, RMC No. 66-2012 was issued by respondent pursuant to the Commissioner's power to interpret tax laws and to promulgate rules and regulations for their implementation. Section 4 of RA No. 8424, as amended, provides that the BIR Commissioner has the power to interpret the provisions of the NIRC and tax laws, subject to review by the Secretary of Finance. To aid in the implementation of tax laws, the BIR Commissioner recommends the promulgation of Revenue Regulations, issue tax rulings, and other revenue issuances, among others. As the government agency charged with the enforcement of the law, the opinion of the BIR Commissioner, in the absence of any showing that it is plainly wrong, is entitled to great weight.[36]

We find RMC No. 66-2012 consistent with RA No. 7353, as well as with the Corporation Code.[37]

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.[38] Under the Corporation Code, two or more corporations may consolidate into a new single corporation which shall be the consolidated corporation.[39] The primary law governing rural banks is RA No. 7353, supplemented by the Corporation Code, where applicable.[40]

RA No. 7353 did not expressly provide for tax exemptions in cases of consolidation of rural banks. The law did not categorically include any tax incentive

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34 Petitioner's Memorandum, docket, vol. II, pp. 742-743.
35 Petitioner's Memorandum, docket, vol. II, p. 751.
36 *Misamis Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary, et al.*, G.R. No. 108524, November 10, 1994.
37 Batas Pambansa Bilang 68, The Corporation Code of the Philippines.
38 Section 2, Corporation Code.
39 Section 76, Corporation Code.
40 Section 4, Corporation Code.

for mergers or consolidations of rural banks under Section 18 thereof, which provides:

> 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:
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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 surcharges 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.

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.

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:

> Sec. 80. Effects of merger or consolidation. - The merger or consolidation shall have the following effects:
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> xxx xxx xxx
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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. (Emphasis supplied)

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.

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.

It bears pointing out that the issue raised in this case is not novel. The Court of Tax Appeals *en banc* had previously resolved the same issue in a case involving the same parties. The Court *en banc* held that Section 15 of RA No. 7353 does not exempt petitioner, as a consolidated rural bank, from payment of GRT. It was further ruled that the legislature did not intend rural banks to have tax exemptions for an indefinite period; otherwise, the statute would have expressly indicated so, or, at the very least, extended the exemption period for several more years.[41] The same holds true in this case.

Verily, there is no rule of law or jurisprudence which grants tax exemptions to consolidated rural banks.

It has been a constant and uniform holding 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.[42]

Indeed, taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[43] Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken.[44] Therefore, based on the foregoing discussions, it is clear that petitioner is not exempted from payment of GRT.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

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41 *One Network Bank, Inc. (A Rural Bank) vs. Commissioner of Internal Revenue*, CTA EB No. 1200, August 14, 2015.

42 *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs*, G.R. No. L-21841, October 28, 1966.

43 *Cyanamid Philippines, Inc. vs. Court of Appeals*, 379 Phil. 689 (2000).

44 *Philippine Long Distance Telephone Company, Inc. vs. City of Davao*, 447 Phil. 571 (2003).

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice