REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CENTRAL EQUITY RURAL
BANK, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5907

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JUL 06 2000

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DECISION

This is a judicial claim for refund of percentage taxes in the total amount of P38,937.81 alleged to be erroneously paid by the Petitioner for the second and third quarters of 1997.

The facts as simplified by the Petitioner and Respondent in their Joint Stipulation of Facts:

> 1) That on February 24, 1997, Petitioner applied for registration with the Securities and Exchange Commission as a rural banking institution as shown by its Articles of Incorporation and By-Laws;
>
> 2) That Petitioner was issued a Certificate of Registration No. A199703625 by the Securities and Exchange Commission on February 28, 1997;
>
> 3) That Petitioner likewise obtained on March 11, 1997 from the Bangko Sentral ng Pilipinas a Certificate of Authority to operate as a rural bank;
>
> 4) That Petitioner filed its quarterly percentage tax return for the second quarter of 1997 on July 14, 1997;

5) That Petitioner filed its quarterly percentage return for the third quarter of 1997 on October 9, 1997;

6) That on October 20, 1997, Petitioner through its Accountant Carisa M. Coderes, wrote Commissioner Liwayway Vinzons-Chato, Bureau of Internal Revenue, Quezon City regarding its claim for refund or tax credit of the above-mentioned percentage taxes paid;

7) That on January 12, 1999, Petitioner through its Vice-President Feliciano Miranda III wrote incumbent Commissioner Beethoven Rualo reiterating its request for tax refund or credit;

8) That on May 19, 1999, Petitioner received a letter dated April 30, 1999 from Asst. Chief, Appellate Division - BIR Jose Ric Cabrera informing that the issue has been referred to the Revenue District Officer, BIR District Office No. 54, Trece Martires City for factual investigation, report and recommendation;

9) That on May 31, 1999, Petitioner through Mr. Miranda wrote the RDO - BIR District No. 54, Trece Martires City again reiterating its claim for refund or tax credit; and

10) That the Petition in the instant case was filed with this Honorable Court on July 14, 1999.

The issues in this case are likewise stipulated by the parties, to wit:

(a) Whether or not Petitioner is exempt from payment of gross receipts tax for the second and third quarters of 1997 pursuant to Section 15 of Republic Act No. 7353;

(b) Whether or not Petitioner made erroneous payments of gross receipts tax for the second and third quarters of 1997; and

(c) Whether or not Petitioner is entitled to a tax refund or credit in the total amount of P38,937.81 representing the gross receipts tax erroneously paid.

For clarity, Section 15 of Republic Act No. 7353 is hereunder quoted:

SEC. 15. All rural banks created and organized under the provision 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 operation.

> 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.

Republic Act No. No. 7353 took effect on June 9, 1992 and Petitioner commenced operations only on March 11, 1997 (see Section 7 of Revenue Regulations No. 16-93). Therefore, it appears that Petitioner is exempt from payment of all taxes, fees and charges except the corporate income tax, local taxes, fees and charges for a period of five years from said date of its commencement of operation.

Respondent, on the other hand, is of the opinion that the allegation of Petitioner that it is exempt from payment of gross receipts tax pursuant to the aforecited Section 15 of said law is self-serving. He avers that Section 119 of the Tax Code, as amended, subjects a rural bank like herein Petitioner to a tax on gross receipts derived from sources within the Philippines. He asserts further that Petitioner failed to prove that the gross receipts it derived from sources within the Philippines are not covered under the term "gross income" under Section 28 of the Tax Code.

We do not agree with the Respondent.

Section 15 of R.A. No. 7353 is quite specific. Petitioner being just new in business in 1997 is 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 years from its commencement of operation. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. (**Republic vs. Court of Appeals**, 229 SCRA 199; **Land Bank of the Philippines vs. Court of Appeals**, 258 SCRA 404).

More importantly, Respondent issued Revenue Regulations No. 16-93 (April 22, 1993) clearly providing that rural banks are exempt from the tax imposed under Section 119 of the NIRC, on gross receipts derived from sources within the Philippines. We therefore cite the pertinent provisions of the said revenue regulations, *viz*:

> Sec. 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)
>
> <u>The corporate income taxes which rural banks are liable to pay are the following</u>:
>
> (a) 35% corporate income tax as provided for under Section 24(a) of the NIRC;
>
> (b) 20% final withholding tax (FWT) on interest income derived from Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes, trust funds and similar arrangements, and royalties derived from sources within the Philippines. (Section 24(e)(1), NIRC);
>
> (c) Creditable expanded withholding tax (EWT) on sales, exchanges or transfers of real properties (whether classified as ordinary or capital asset) by Rural Banks consummated on or after January 1, 1990 (RMC 7-90);
>
> (d) Capital gains tax (CGT) on capital gains realized from the sale, exchange or disposition of the shares of stocks in any domestic corporation under Section 24(e)(2), NIRC; and (ii) as statutory seller of acquired real property through mortgage foreclosure sale, whether judicial or extrajudicially under Revenue Memorandum Order No. 6-92 dated January 15, 1992, the creditor-rural bank representing the owner-mortgagor of the real property becomes liable to pay the capital gains tax due on such foreclosure sale based on the bid price in the auction sale; and

(e) All other income taxes as provided for and imposed under Title II of the NIRC.

B. Exemption from gross receipts tax. - 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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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 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, or the date when the Certificate of Authority to operate was issued by the Monetary Board of the Central Bank, whichever comes later. (Underscoring supplied.)

Furthermore, the then Deputy Commissioner of Internal Revenue Victor A. Deoferio, Jr. issued BIR Ruling No. 185-93 which granted the request for exemption of 5% bank tax imposed in Section 119 of the Tax Code.

With the above discussion, We rule that Petitioner is exempt from the payment of gross receipts tax pursuant to Section 15 of Republic Act. 7353. Accordingly, the gross receipts tax paid by the Petitioner for the second and third quarters of 1997 were erroneously made.

Finally, We resolve the issue of whether or not Petitioner is entitled to the claim sought for.

Respondent argues that the official receipts and certificate submitted by Petitioner are not conclusive evidence of payment and remittance to the BIR.

We do not subscribe to the view of the Respondent.

Section 125 of the then Tax Code mandates:

> SEC. 125. *Returns and payment of percentage taxes.* - (a) Return of gross sales, receipts or earnings and payment of tax.
>
> (1) *Persons liable to pay percentage taxes.* - Every person subject to the percentage taxes imposed under this Title shall file a quarterly return of the amount of his gross sales, receipts or earnings and pay the tax due thereon within 20 days after the end of each taxable quarter: xxx

The aforesaid law does not provide for a particular manner on how to file and pay the taxes due. It mainly requires that a taxpayer must file a quarterly percentage return and pay the tax due thereon within twenty days after the end of each taxable quarter. The Petitioner filed its second and third percentage quarterly returns as per the quarterly returns submitted to this Court as well as the certificate issued by the Revenue District Officer of RDO No. 54 of Trece Martires City. Payment of the taxes due were evidenced by the official receipts issued by Land Bank of the Philippines (Exhs. A & B). The argument of the Respondent that even if payments were made, no proof of the remittance thereof to the government was shown does not hold water. It must be emphasized that under Section 6 of the Tax Code, an accredited bank like the Land Bank of the Philippines is an authorized agent of the Commissioner of Internal Revenue. Once payment of internal revenue taxes were made thereto the bank becomes the collection agent of the government. And as an official agent of the government, it is presumed that the law has been obeyed and that official duty has been regularly performed (Section

3(ff) & (m), Rule 131, Rules of Court). In short, remittance to the government by the Land Bank of the Philippines is presumed once the payment of taxes thereto was proved. The burden of proof is now shifted to the Respondent to show that no payment and/or remittance was ever made by the Petitioner. But as records will indubitably reveal, Respondent did not submit any evidence to refute Petitioner's claim. In fact, he merely submitted the case for decision based on the pleadings (CTA rec., p. 52).

WHEREFORE, in view of the foregoing, the instant petition is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** to the Petitioner the amount of P38,937.81. representing percentage taxes erroneously paid for the second and third quarters of 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge