REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANTAM PAWNSHOP CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6510

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 14 2003

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DECISION

This case seeks for the cancellation and setting aside of the Assessment Notices dated November 23, 2001, all bearing the same Assessment No. 32-1-98, issued by respondent against petitioner for deficiency Value-Added Tax, Minimum Corporate Income Tax and Documentary Stamp Tax for taxable year 1998.

Petitioner is a duly organized domestic corporation engaged in the pawnshop business, with business address at 1658 España Street, Sampaloc, Manila. *(par. 1(a), Joint Stipulation of Facts and Issues)*

On October 27, 1999, respondent issued Letter of Authority No. 1998 00001631 *(par. 1(b), Joint Stipulation of Facts and Issues)*, which was received by petitioner through its representative, Violeta A. Pariña, on October 28, 1999. The said letter of

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Authority authorized Ma. Angeles Rosales/Remedios Yorobe of the BIR RDO-32, Quiapo, Manila to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 1998 to December 31, 1998 *(page 62, BIR Records).*

Thereafter, a Pre-Assessment Notice dated October 2, 2001 was issued by respondent, through Regional Director Ruperto Somera, for deficiency value-added tax (VAT), documentary stamp tax (DST) and minimum corporate income tax (MCIT) for taxable year 1998. *(par. 1 (c), Joint Stipulation of Facts and Issues; page 89, BIR records)*

On November 23, 2001, respondent issued Assessment Notices, all bearing the number 32-1-98 with corresponding Demand Letters for petitioner's (a) deficiency VAT with compromise penalties in the total amount of P382,445.01; (b) deficiency MCIT plus interest up to November 29, 2001, in the amount of P687.69; and (c) deficiency documentary stamp tax in the amount of P78,590.00, for the taxable year 1998 *(par. 1(d), Joint Stipulation of Facts and Issues),* details of which are shown below:

Deficiency Value-added tax (Sec. 108)

Taxable Sales	P2,437,508.00
Output Tax Due (10%)	243,750.80
Less: Allowance tax credits/Taxes already paid	
Deficiency Due	P243,750.80
Add: 25% surcharge (non-filing & payment	
20% interest per annum up to 11-29-01	138,694.21
Compromise penalty for late payment/late filing	
Total Amount Due & Collectible	P 382,445.01

(pages 97 & 98, BIR records)

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Deficiency Income Tax-Unpaid MCIT

Total Income	P2,437,508.00
Less: Direct Cost	2,297,934.54
Gross Income	P 139,573.46
2% MCIT due (Sec. 27 E)	2,791.47
Less: Paid per Return	2,340.23
Tax Due	P 451.24
Add: Interest (11-29-01)	236.45
Total Amount Due	P687.69

(pages 91-92, BIR Records)

Deficiency Documentary Stamp Tax

Pledge Loan (P15,898.350÷5,000)	P63,590.00
Subscribed Capital Stock	15,000.00
Deficiency Tax Due	P78,590.00
Total Amount Due and Collectible	P78,590.00

(pages 94 & 95, BIR records)

Meanwhile, on November 15, 2001, or prior to the issuance of the aforementioned Assessment Notices, petitioner paid the sum of P451.24 by way of MCIT for the taxable year 1998, as evidenced by Metrobank Official Receipt No. 091-0014593 dated November 15, 2001 and BIR Payment Form No. 0605 which was received by the BIR on November 15, 2001. *(par. 1(e), Joint Stipulation of Facts and Issues)*

On December 21, 2001, petitioner filed its written protest to the Assessment Notices. *(par. 1(f), Joint Stipulation of Facts and Issues; pages 101-108, BIR records)*

To date, petitioner's protest has not been acted upon by respondent, thus, petitioner filed its petition for review with this court on July 19, 2002.

In his Answer, respondent raised the following Special and Affirmative Defenses:

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"6. The assessment is valid and correct and the taxpayer has the burden of proof to impugn its validity (Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647). Thus, similarly held, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671)

7. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et al., 19SCRA 903 [1967]); otherwise, the presumption in favor of the correctness of the tax assessment stands (Inter Provincial Bus Co., Inc. vs. Collector of Internal of Internal Revenue, 98 Phil 290 [1956]; Collector of Internal Revenue vs. Bohol Land Transportation, Co., 107 Phil 967 [1960])

8. Petitioner is subject to 10% VAT based on its *gross receipts* pursuant to R.A. No. 7716 otherwise known as Expanded Value-Added Tax (EVAT) Law, as amended by the 1997 Tax Code (RA No. 8424).

9. Unless expressly exempt from VAT, any person engaged in the sale of goods, property or services in the course of trade or business shall be liable to the 10% VAT (Revenue Memorandum Circular No. 45-2001).

10. BIR Ruling No. 221-91 provides that pawnshop tickets are subject to Documentary Stamp Tax (DST) because a pawnshop ticket virtually evidences a pledge. Since petitioner lent money at interest and requires a pledge of personal property as security, the essence of its operation is *lending money*. Thus, petitioner's pawnshop tickets shall likewise be subject to DST pursuant to Section 195 of the 1997 Tax Code.

11. Under Section 222 (a) of the 1997 Tax Code, in case of false or fraudulent return with intent to evade tax or *of failure to file return*, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or *omission*.

12. Where there is failure to file VAT and DST returns, the period to assess is clearly within ten (10) years after the date of discovery of the omission to file said returns.

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The following issues have been jointly stipulated by the parties:

1. Whether or not petitioner is subject to Value-Added Tax;
2. Whether or not pawnshop tickets are subject to Documentary Stamp Tax;
3. Whether or not petitioner is still subject to MCIT for 1998.

Anent the first issue, petitioner contends that it is not liable to the payment of value-added tax since pawnshops are not included in the long enumeration of businesses whose services are deemed "sale or exchange of services" subject to VAT. Hence, not being included therein, petitioner concludes that the intention of Congress was to exclude pawnshops from the coverage of the law.

Respondent, however, counters by claiming that pawnshop transactions are not among those enumerated transactions that are zero-rated under Section 108(B) or exempt from VAT under Section 109 of the 1997 Tax Code. According to respondent, the enumeration of persons subject to 10% of VAT under Section 108 (A) of the Tax Code is not exclusive. Other persons performing services for a fee who are not expressly mentioned in the enumeration are also subject to VAT and that the phrase "including" in paragraph 2 of Section 108(A) of the Tax Code should be construed as an enlargement and not of limitation.

We agree with the respondent.

Section 102(a) [now renumbered as Section 108(A)] of the Tax Code provides in pertinent part:

"**SEC. 102**. *Value-added Tax on Sale of Services and Use or Lease of Properties*. -

"(A) *Rate and Base of Tax*. - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

"The phrase '***sale or exchange of services***' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors: stock, real estate, commercial, customs and immigration brokers; lessors or property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension house, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes, and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees except those under Section 119 of this Code: services of banks, non-life insurance companies (except their crop insurances), including surety, fidelity,. indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.

x x x　　　　x x x　　　　xxx

The term '***gross receipts***' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding the value-added tax." [Underscoring ours]

From the foregoing, it is clear that the sale or exchange of services is subject to VAT. The phrase "sale or exchange of services" encompasses the performance of all kinds or services for others for a fee, remuneration or consideration. The enumeration of persons performing services for a fee, such as, construction and service contractors, stock, real estate, commercial, customs and immigration brokers, etc., is merely intended to give examples of businesses performing services for a fee that are subject to VAT. The enumeration is not exclusive, which means that other persons performing services for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT. As held in **Gomez vs. Ventura, (54 Phil. 726)**:

> "x x x The maxim <u>expressio unius est exclusio alterius</u> should be applied only as a means of discovering legislative intent and should not be permitted to defeat the plain indicated purpose of the legislature. <u>It does not apply when words are mentioned by way of example, or to remove doubts.</u> **(See Cyc., 1122)** x x x." [Underscoring ours]

The said Section 102(a) [now 108(A)] does not limit its application to those enumerated therein because the law speaks of "all kinds of services." To limit its application to the enumeration would contradict the very clear meaning of the phrase "all kinds of services". The phrase "including" should be construed merely as an enlargement and not of limitation.

> "The intention of an act will prevail over the literal sense of its terms. Thus, limited words in one part of an act may be expanded by general words in another part, if the general words more nearly express the legislative intent.

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A term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction than where the definition declares what a term 'means'. Thus, it has been said that 'the word 'includes' is usually a term of enlargement, and not of limitation... It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated..." Sutherland, *Statutory Construction*, 4th Ed., Vol. 2A, p. 82, Sec. 47.07 citing United States Argosy Ltd. v. Hennigan, 404 F2d 14 (CA 5th, 1968); See United States v. Gertz, 249 F2d 662 (CA 9th, 1957); Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 US 95, 86 L Ed 65, 62 S Ct1 (1941). (Emphasis supplied.)

Hence, the terms "includes" and "including" do not exclude items otherwise within the scope of the defined term.

The terms "includes" and "including" when used in the Code are not deemed to exclude items otherwise within the meaning of the term defined. Thus, where Section 1(e) applies to the taxable income of estates "including" and thereafter lists four types of income from trusts or estates that are taxable, other types of estates may also be subject to taxation under Section 1(e). To hold differently would, in effect, substitute the term "limited to" for "including". Mertens, *Law of Federal Income Taxation*, 1995 Ed., Section 3.37, Chap. 3, pp. 55-56, citing *In re Joplin, Jr.*, 882 F2d 1507 (CA10 1989), applying IRC & 7701(c).

In the cases of ***Genato Commercial Corporation vs. The Court of Tax Appeals, et al.***, *104 Phil. 615* and ***Philippine-American Drug Co. vs. Collector of Internal Revenue and Court of Tax Appeals***, *106 Phil. 161*, general words were harmonized with specific words found in the statute in question so as not to limit the coverage of the taxing statute. In determining that the bank charge in question formed part of the charges enumerated in Art. 183-(B) of the then Tax Code, the Supreme Court held:

As may be seen, an importer is required to pay in advance the necessary percentage tax on the articles imported "based on the import invoice

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> value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges." In other words, the law requires that it be included in the assessment not only the import invoice value of the merchandise, which includes freight, postage, insurance, commission and customs duty, but all other similar charges which would necessarily increase the landed cost of the merchandise imported, which, in our opinion, should include the difference of Php 0.15 paid by petitioner to a local bank in the purchase of foreign exchange to carry out the importation. Indeed, the intention of Congress in enacting the above-quoted provision is to include in the assessment all charges, whether specified or otherwise, which an importer has to pay to complete his importation.
>
> Invoking the rule of *ejusdem generis* which provides that "where, in a statute, general words follow a designation of a particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically enumerated," petitioner contends that the difference of Php 0.15 which it paid to a local bank in the purchase of foreign exchange to cover the importations in question cannot be included in the assessment for the purpose of determining the advance sales tax because they are not similar to the charges specifically enumerated in the law.
>
> With this we disagree, for it cannot be denied that the intention of the law is to include all charges, that may be paid by the importer to bring the importation into the country. In other words, all items of expense that may be incurred by the importer in bringing the importation into the country and which would necessarily increase the landed cost must be deemed included in the phrase "all similar charges" mentioned in the law. The doctrine of *ejusdem generis* is but a rule of construction adopted as an aid to ascertain and give effect to the legislative intent when that intent is uncertain or ambiguous, but the same should not be given such wide application that would operate to defeat the purpose of the law. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (*State vs. Prather*, 21 L.R.A. 23, 25).

In this particular case, the law is not only clear in its intent but also in its wording that "all kinds of services" should be subject to VAT. Hence, pawnshop services should a *fortiori* be subject to VAT.

Furthermore, Section 105 of the 1997 Tax Code provides:

> "Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code."

Inasmuch as pawnshops are engaged in the sale of services for a fee, remuneration or consideration, they are subject to VAT under Section 108(A) of the Tax Code, as amended. This conclusion finds support in recent decisions laid down by the Court of Appeals (***Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.***, *C.A. G.R. SP No.59282, March 23, 2001 and* ***Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc.***, *C.A. G.R. SP No. 59401, September 30, 2002),* the latest of which is the case of ***Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.***, *C.A. G.R. SP No. 68180, promulgated on February 10, 2003,* where the Court of Appeals categorically ruled that pawnshops are subject to the 10% VAT imposed under Section 108 (A) of R.A. 8424, thus:

> "A value-added tax is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto.
>
> In the case at bar, it has been the contention of respondent Agencia Exquisite of Bohol, Inc. that the business of a pawnshop is not similar to that of a lending investor. A pawnshop, according to respondent is principally engaged in the business of delivering money to another, secured by personal property, upon the condition that the latter shall pay the former, otherwise, the thing pawned shall be sold for the payment of the principal obligation. Hence, a pawnshop operator engages in a pledge transaction.

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We are not convinced. The business of pawnshops are akin to that of lending investors. Respondent itself admitted that a lending investor is a person who makes a practice of lending money for themselves or others at interest. It seems that respondent forgotten that the business of a pawnshop is also to lend money for others at interest. The difference between lending investors and pawnshops lies only on the security given, that is, a lending investor may require both real and personal property as security for the loan; whereas a pawnshop can require only personal property as security for the loan. But in the end, a lending investor and a pawnshop both engage in the business of lending money for others at interest. Accordingly, a lending investor and a pawnshop are both subject to VAT, pursuant to the provision of the National Internal Revenue Code of 1997 which provides that "there shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by x x x lending investors x x x."

Even assuming *arguendo* that we do not classify pawnshops as lending investors, still pawnshops are subject to the 10% VAT imposed under Section 108(A) of R.A. 8424. Pawnshops refer to persons or entities engaged in the business of lending money on personal property delivered as security for loans. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to value added tax. The personal properties delivered by clients of pawnshops as security for the loans which the former obtained from the latter are in the form of remuneration or consideration, for without such personal properties, pawnshops will not extend any loan to a borrower. Furthermore, the payment of interest imposed on a borrower by a pawnshop is equivalent to a fee in exchange of the service provided by the pawnshop in lending money to such borrower. Thus, the phrase "***all kinds of services***" as stated in the second paragraph of Section 108(A) of R.A. 8424 is broad enough to cover the kind of service, that is, lending money in consideration of personal property delivered as security, which is provided by pawnshops to their borrowers. And the enumeration of sale or exchange of services under Section 108(A) of R.A. 8424 does not limit nor exclude other kinds of services performed for a fee, remuneration or consideration. Rather, such enumeration even expanded the meaning of the phrase "***all kinds of services***".

Besides, pawnshops do not merely engage in the service of lending money to pawners. Rather, pawnshops also sells, at public auction, personal

> properties pawned to them, in the event that the pawner fails to redeem the pawn within ninety days from the date of maturity of the obligation, the pawnbroker may ***sell or otherwise dispose*** of any article taken or received by him in pawn. Thus, by selling properties, pawnshops shall be subject to VAT.
>
> Finally, respondent Agencia Exquisite of Bohol, Inc. reiterates that it is claiming exclusion from the coverage of the value-added tax law and it is not claiming exemption from payment thereof. We are not persuaded. When a taxpayer claims exclusion from payment of the VAT, he is thereby claiming exemption from payment thereof. For what is the effect of exclusion from the VAT other than exemption from payment thereof? They have the same effect. That is, when a taxpayer claims exclusion or exemption from payment of the VAT, he is in effect claiming that he is not liable to pay a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services.
>
> It is settled that tax exemptions should be strictly construed against those claiming to be qualified thereto. Any exemption from the payment of a tax must be clearly stated in the language of the law. Pawnshops are not clearly stated in the National Internal Revenue Code of 1997 to be exempted from payment of the VAT. Hence, pawnshops shall be liable to pay ten percent (10%) of their gross receipts derived from sale or exchange of services as value-added tax."

It bears stressing that Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulation Act", defines a pawnshop as follows:

> "Pawnshop shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably with, pawnbroker or pawnbrokerage."

Judicial notice may be taken of the fact that the principal activity of pawnshops is lending money at interest on the security of personal property. The act of lending money at interest constitutes the performance of a service for a fee, remuneration or

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consideration for such service. In other words, the liability of pawnshop operators to pay the VAT no longer depends on the classification of their business but on the services they rendered. As a consequence thereof, rulings or decisions declaring that pawnshops are not lending investors have lost their bearing for as long as pawnshops are engaged in the sale of services like lending money on the security of personal property. Hence, petitioner cannot escape liability to pay the 10% VAT under Section 102(A) [now Section 108(A)] of the Tax Code.

Transactions which are exempt from VAT are enumerated under Section 103 [now Section 109] of the Tax Code, as amended by R.A. No. 7716. Pawnshop transactions are not among the exempt transactions. Neither are there any express provisions of law exempting pawnshops from VAT. Since the transactions of pawnshops are not among those enumerated in Section 103 [now Section 109] of the Tax Code or any other express provision of law as VAT-exempt, the same are subject to VAT under Section 102(A) [now Section 108(A)]. In this regard, tax exemptions are strictly construed against the taxpayer. In the absence of any clear provision of law exempting pawnshops from VAT, our conclusion is that pawnshops are subject to VAT on their gross receipts since they are clearly engaged in the performance of services.

In the recent case of ***Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation*, G.R. No. 125355, promulgated on March 30, 2001**, the Supreme Court ruled that the taxpayer, not falling within the exemptions mentioned under Section 109 [formerly 103] of the Tax Code, is subject to VAT, thus:

"Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." x x x

x x x

Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. <u>As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.</u>

At any rate, it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, <u>any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom. In the case of VAT, Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT."</u>

Prescinding from the foregoing, pawnshops are subject to the VAT, and as such, petitioner is required to file the corresponding VAT returns and pay the VAT for the taxable year 1998. Section 222 (a) of the Tax Code provides, viz:

"(a) In the case of a false or fraudulent return with intent to evade tax or <u>of failure to file a return</u>*, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or* <u>*omission*</u>*: xxx "* (Underlining supplied)

Petitioner's failure to file the corresponding VAT returns within the prescribed period gave respondent the right to assess petitioner for deficiency VAT within ten (10) years from date of discovery pursuant to Section 222 of the Tax Code. Therefore, when

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the subject VAT assessment was issued on November 23, 2001 for the year 1998, the same was not time-barred.

Apropos the issue on whether or not pawnshop tickets are subject to documentary stamp tax, we rule in the negative.

Section 195 of the Tax Code is at point, thus:

> "SEC. 195. Stamp tax on mortgages, pledges and deeds of trust.- On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates: x x x"

The foregoing provision declares that a document evidencing a pledge of personal property which is made as a security for payment of a loan is subject to the documentary stamp tax. Corollarily, Section 3 of P.D. No. 114 (Pawnshop Regulation Act) defines a pawn ticket as the pawnbroker's "receipt" for a pawn. It is neither a security nor a printed evidence of indebtedness. Thus, inasmuch as the document taxable under Section 195 must be the document evidencing the indebtedness and considering that under the Pawnshop Regulation Act, a pawn ticket is not a printed evidence of indebtedness, consequently, such pawn ticket cannot be considered as a document subject to documentary stamp tax. ***(Commissioner of Internal Revenue vs. Hon. Andres B. Reyes, Jr., CA-G.R. SP No. 28824, promulgated on December 23, 1993).***

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As regards the documentary stamp tax assessment on subscribed capital stock in the amount of P15,000.00, petitioner maintained that it has already paid the correct amount of DST for the subject taxable year. However, a perusal of the records do not disclose any proof of such payment.

For failure of the petitioner to satisfactorily refute the findings of the revenue examiners, the court rules to uphold the said assessment. "Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments ***(Bonifacio Sy Po vs. Court of Tax Appeals and Commissioner, 164 SCRA 524).*** Failure to present proof of error in the assessment will justify judicial affirmance of said assessment ***(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, May 21, 1986).***

Finally, with regard to petitioner`s deficiency MCIT, petitioner contends that it is not liable to pay the deficiency MCIT of P687.69 since it has already paid the basic deficiency MCIT of P451.24 on November 15, 2001, prior to the issuance of the Assessment Notice dated November 23, 2001. Payment was evidenced by Metrobank Official Receipt No. 091-0014593 and Payment Form (BIR Form No. 0605), both dated November 15, 2001.

While we concede that payment was indeed made by petitioner on November 15, 2001 in the amount P451.24, we cannot, however, subscribe to petitioner's contention that it is no longer liable to pay any interest thereon. It is to be noted that the deficiency MCIT issued against petitioner in the amount of P687.69 is composed of the basic MCIT of P451.24 and interest computed from April 15, 1999 until November 29, 2001 in the amount of P236.45. Under Section 249 of the Tax Code, there shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid. Since the date prescribed for payment of petitioner's MCIT for the taxable year 1998 is on or before April 15, 1999 and petitioner failed to pay on said date, the latter is liable for the 20% deficiency interest counted from April 15, 1999 up to the date of actual payment on November 15, 2001 (*or a total of 945 days*) in the amount of P233.74, computed as follows:

P 451.24 X 20% X 945/365 days= P 233.74

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, petitioner is hereby **ORDERED** to **PAY** the following:

1. Deficiency VAT assessment in the amount of P382,445.01, inclusive of 20% deficiency interest, plus 20% delinquency interest from December 28, 2001 until fully paid pursuant to Sections 248 and 249(B) and (C) of the Tax Code;
2. Deficiency interest of P233.74 for late payment of MCIT pursuant to Section 249(B) of the Tax Code, plus 20% delinquency interest from December 28, 2001 until fully paid pursuant to Section 249(C) of the Tax Code; and

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3. Deficiency documentary stamp tax assessment on subscribed capital stock in the amount of P15,000.00.

However, finding that a pawnshop ticket is not subject to the documentary stamp tax under Section 195 of the Tax Code, Assessment Notice No. 32-1-98 dated November 23, 2001 for deficiency documentary stamp tax in the amount of P63,590.00 is hereby **CANCELLED** and **SET ASIDE.** Moreover, Assessment Notice No. 32-1-98 dated November 23, 2001 for Deficiency Income Tax- Unpaid MCIT in the amount of P451.24 is hereby **CANCELLED** and **SET ASIDE** on account of payment made by petitioner on November 15, 2001. Lastly, the assessment notices dated November 23, 2001, also numbered 32-1-98, issued by respondent against petitioner for compromise penalty for late payment/late filing in the amounts of P16,000.00, P200.00 and P12,000.00 are hereby **CANCELLED** and **SET ASIDE** as there is no compromise to speak of in the instant case.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

(Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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ANTAM PAWNSHOP CORPORATION,
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- versus -

C.T.A. CASE NO. 6510

COMMISSIONER OF INTERNAL REVENUE,
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Promulgated:
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CONCURRING AND DISSENTING OPINION

I concur with the conclusion reached by my respected colleagues to hold petitioner liable both for deficiency VAT assessment and deficiency interest for the reasons clearly discussed in the decision. However, I am unable to agree with their finding that a pawn ticket is not subject to the documentary stamp tax since it is not a printed evidence of indebtedness.

Section 195 of the Tax Code provides in pertinent part:

> **SEC. 195.** ***Stamp Tax on Mortgages, Pledges, and Deeds or Trust.*** - On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:

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"(a) When the amount secured does not exceed Five thousand pesos (P5,000), Twenty pesos (P20.00).

"(b) On each Five thousand pesos (P5,000) or fractional part thereof in excess of Five thousand pesos (P5,000), an additional tax of Ten pesos (P10.00).

"On any mortgage, pledge, or deed of trust, where the same shall be made as a security for the payment of a fluctuating account or future advances without fixed limit the documentary stamp tax on such mortgage, pledge or deed of trust shall be computed on the amount actually loaned or given at the time of the execution of the mortgage, pledge or deed of trust. However, if subsequent advances are made on such mortgage, pledge or deed of trust, additional documentary stamp tax shall be paid which shall be computed on the basis of the amount advanced or loaned at the rates specified above: Provided, however, That if the full amount of the loan or credit, granted under the mortgage, pledge or deed of trust is specified in such mortgage, pledge or deed of trust, the documentary stamp tax prescribed in this Section shall be paid and computed on the full amount of the loan or credit granted." [Underscoring ours]

Pawnshops lend money on the security of personal property, that is, a pledge. The pledge is evidenced by a pawn ticket. Hence, the pawn ticket is the logical document subject to documentary stamp tax on pledges under Section 195 of the Tax Code (Revenue Memorandum Circular No. 43-91, May 27, 1991). In this regard, it should be noted that the pawner presents the pawn ticket to redeem the pawned or pledged item. The pawn ticket is thus document evidencing the pledge. Section 173 of the Tax Code provides:

SEC. 173. ***Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.*** – Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transactions so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting or transferring the same wherever the document is made, signed, issued,

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> accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. [Underscoring ours]

In ***Cruz vs. Chua, G.R. No. 31018, November 6, 1929, 54 Phil.10,*** our Supreme Court refers to the pawn ticket as a contract of pledge as follows:

> In applying this provision to the situation before us it must be borne in mind that the <u>ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket; and the contract of pledge</u> is, therefore, absolvable to bearer. It results that <u>one who takes a pawn ticket in pledge acquires domination over the pledge</u>; and it is the holder who must renew the pledge if it is to be kept alive. [Underscoring ours]

As the person accepting the pawn ticket, which is the evidence of the pledge, the pawnshop is liable for documentary stamp tax thereon.

In view of the foregoing, I vote to hold petitioner liable not only for deficiency value-added tax and deficiency interest but also for deficiency documentary stamp tax but only for the amount of P31,806.70 (*not P63,590.00*), computed as follows:

Pledge loans	P15,898,350.00	
DST Due:	First P5,000.00	P 20.00
	P15,893,350.00/P5,000.00 =	
	3,178.67 x P10.00	31,786.70
		P 31,806.70

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Judge

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