REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

METROPOLITAN RESOURCES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 464
(C.T.A. Case No. 6953)

Present:

Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.:*

Promulgated: SEP 08 2009 2:05 p.m.

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DECISION

CASTAÑEDA, JR., J.:

For Our review are the Decision dated October 3, 2008 and the Resolution dated February 6, 2009 issued by the Court in Division in the case entitled, "Metropolitan Resources Corporation vs. Commissioner of Internal Revenue" docketed as C.T.A. Case No. 6953.

THE FACTS

Metropolitan Resources Corporation ("MRC") is a domestic corporation duly organized and existing under and by virtue the laws of the Republic of the Philippines with taxpayer's identification number ("TIN") 000-895-045[1]; while the Commissioner of Internal Revenue ("Commissioner") is an official vested with authority to perform, among others, decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties, or other matters arising under the 1997 National Internal Revenue Code ("NIRC") [2], or other laws administered by the Bureau of Internal Revenue ("BIR").

The Commissioner issued a Preliminary Assessment Notice ("PAN") dated June 26, 2003 which was received by MRC showing its alleged 2000 value added tax ("VAT") and documentary stamp tax ("DST') deficiencies in the cumulative amount of P5,706,265.49.[3]

On January 28, 2004, the Commissioner through Acting Regional Director Anselmo G. Adriano informed MRC of its 2000 VAT and DST deficiencies in the aggregate amount of P5,960,441.88 as detailed in the

[1] Joint Stipulation of Facts and Issues, Division Docket, p. 87.
[2] Also known as Republic Act No. 8424, or The Tax Reform Act of 1997.
[3] Joint Stipulation of Facts and Issues, Division Docket, p. 87.

Formal Assessment Notice ("FAN") Nos. VT-61101-00-04-567 and DS-61101-00-04-567:

Deficiency Value Added Tax		
Total Selling Price on Auction Sale	P	21,071,154.00
Total Interest Income		5,527,787.50
Other Liquidation Damages		1,470,127.00
Gross Receipts Per Audit		28,069,068.50
VAT Due thereon		2,806,906.85
Less: VAT Payments		0.00
Basic Deficiency VAT		2,806,906.85
Add: 50% surcharge		1,403,453.42
20% Interest 01/26/01 to 1/29/04		1,684,144.00
Total Deficiency Value Added Tax	**P**	**5,894,504.38**

Deficiency Documentary Stamp Tax		
Pledge Loan	P	15,619,900.00
Tax due thereon		31,250.00
Add: 50% Surcharge		15,625.00
20% Interest 01/11/01 to 01/29/04		19,062.50
Total Deficiency Documentary Stamp Tax	**P**	**65,937.50**[4]

On February 6, 2004, MRC protested FAN Nos. VT-61101-00-04-567 and DS-61101-00-04-567, however, on March 19, 2004, the Commissioner affirmed its alleged VAT and DST liabilities for taxable year 2000.[5]

Dissatisfied, MRC appealed by way of a Petition for Review docketed as C.T.A. Case No. 6953 with the Court in Division on April 21, 2004.

On December 18, 2006, MRC filed a Manifestation and Motion to Hold in Abeyance the resolution of the case stating that it allegedly paid 25% of its VAT liabilities for the year 2000. It also signified that in the event of the approval of the settlement agreement with the BIR, MRC

[4] Joint Stipulation of Facts and Issues, Division Docket, pp. 88-89.
[5] Joint Stipulation of Facts and Issues, Division Docket, p. 90.

intends to avail of the abatement program under Revenue Regulations No. 15-2006 and to withdraw the Petition.[6]

The Division issued a Decision dated October 3, 2008 partially granting the Petition to the extent of its VAT and DST basic tax deficiencies in the cumulative amount of P2,838,156.85, and canceling its surcharges and interests, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Assessment Nos. VT-61101-00-04-567 and DS-61101-00-04-567, covering petitioner's deficiency VAT and DST assessments for taxable year 2000, are hereby **UPHELD** insofar as basic deficiency VAT and DST are concerned. All surcharges and interests are hereby **CANCELLED.**
>
> Accordingly, petitioner is hereby **ORDERED to PAY** respondent the amount of **TWO MILLION EIGHT HUNDRED THIRTY EIGHT THOUSAND ONE HUNDRED FIFTY-SIX PESOS AND 85/100 (P2,838,156.85)**, representing its VAT and DST assessments, computed as follows:

Deficiency Value Added Tax	P	2,806,906.85
Deficiency Documentary Stamp Tax		31,250.00
Total Deficiency VAT & DST for 2000	**P**	**2,838,156.85**

> In addition, petitioner is hereby **ORDERED TO PAY** respondent twenty percent (20%) delinquency interest per annum on the amount of P2,838,156.85, computed from April 25, 2004 until the amount is fully paid.
>
> **SO ORDERED.**[7]

MRC moved to partially reconsider the Decision dated October 3, 2008 which was denied by the Division in the Resolution dated February 6, 2009 due to lack of merit.[8]

[6] Division Docket, p. 321-322.

[7] Penned by Associate Justice Lovell R. Bautista, and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova. See *en banc* Docket, pp. 30-45.

THE ISSUES

Unfazed, MRC sought redress before the Court *en banc* by way of a Petition for Review raising the following issues:

I.

> Section 106 of the Tax Code governing the VAT on Sale of Goods or Properties does not include "pawnshop business". Hence, Petitioner should not be held liable for VAT.

II.

> Petitioner availed of the Settlement Agreement on Value-Added Tax on Pawnshops. Respondent accepted 25% payment of the value added tax due for the tax year 2000.[9]

MRC'S ARGUMENT

MRC contends that Section 108 (A) of the 1997 NIRC applies only to services for fee and remuneration, or consideration. In this case, MRC had established through testimonial and documentary evidence the nature of its business engaged in loan with pledge transactions exempted from VAT. Pawnshops are classified as non-bank financial intermediary regulated by the Bangko Sentral ng Pilipinas ("BSP").

Service is defined as the performance of any duty or work for another and should be understood as referring to the performance of the

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[8] *en banc* Docket, pp.47-50.
[9] *en banc* Docket, pp.14-15.

obligation. MRC asserts that pawnshop business involves a simple contract of loan secured by personal property on the condition that the borrower will pay the creditor; otherwise, the thing pawned shall be sold for the payment of the principal obligation. No service is rendered to the borrower. Similarly in this case, MRC is not performing any duty or work for another person, and should be excluded from payment of VAT.

Assuming for the sake of argument that MRC performs service, it does not charge any service fee, remuneration or consideration. Fee, remuneration or consideration refers to a charge or payment for the services rendered.

The thing pawned is only a security for the money being loaned. It should not be considered as a charge or a payment for the money being loaned; but is merely a security or a guarantee for the money borrowed.

MRC further maintains that interest is the amount one has contracted to pay for the use of borrowed money, and as the compensation paid for the use or forbearance of money. The payment or accrual of interest for tax purposes must be incidental to an unconditional and legally enforceable obligation of the taxpayer claiming the deduction. It is dependent on among others the length of time for which the loan remains outstanding. Interest imposed on the principal contract of loan is payment for the use or forbearance of money. It is the result of a contractual obligation and not a fee for services rendered.

The BIR erred in assessing MRC based on 1) selling price on auction sale; 2) interest income; and; 3) liquidation damages.

Under Republic Act No. 9010, the interest income became subject to VAT only on February 27, 2001.

Auction sale is not a sale in the ordinary course of business; it is merely a consequence of pledge contract. Further, the sale of "rematados" (expired pawned items) is not a taxable pawnshop business because the pawnshops are not the legal owners of the said "rematados", but the pawners, pursuant to Article 2088 of the Civil Code. As such, the transaction involving auction sale is not taxable against pawnshops. Pawners would only be subject to VAT only if they are habitually engaged in the business of buying and selling the goods pawned.

MRC is not the owner of the pawn subject of the auction sale, especially considering that it is expressly forbidden by law to sell or otherwise dispose of the thing pawned or pledged, hence, it should not be liable for VAT based on Section 106 (A) of the 1997 NIRC.

The classification of the business is relevant on the imposition of proper taxes; otherwise, legislature would not have specified the businesses or entities subject to VAT under Section 108 (A) of the 1997 NIRC.

MRC also reiterates that pursuant to a settlement agreement, it already paid 25% of the VAT due for year 2000 on July 15, 2004.

The Commissioner accepted the payment; but until today, the settlement agreement remains unsigned. Several letters were sent to the Commissioner regarding the settlement agreement. To date, he has not yet responded.

The one year investigation had lapsed, and the Commissioner never had disputed the correctness of MRC's self-assessment. He also cleared MRC of any deficiency taxes for the year 2000. The lapse of the one year period of investigation, issuance of the tax clearance and acceptance of payment, all establish the Commissioner's tacit approval of the settlement agreement which in effect renders the same binding upon the parties.

The Commissioner on the other hand, failed to file his Comment to the Petition and Memorandum within the period allowed by the Court.

THIS COURT'S RULING

The Petition is meritorious.

Persons or entities liable for VAT are enumerated in Section 105 of the 1997 NIRC, stating:

> "SEC. 105. *Persons Liable.* – 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. xxx xxx xxx

Section 108 of the same Code specifically provides for the imposition of VAT on sales of services and use or lease of properties on the following:

> "SEC. 108. 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.
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> 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 services contractors; stock, real estate, commercial, customs and immigration brokers; lessors of 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 houses, 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, water relative to the transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this code; services of banks, non-bank financial intermediaries and finance companies; and 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 and mental faculties. xxx xxx xxx

Pawnshops such as MRC are persons or entities 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.[10] Je

[10] Section 3 of Presidential Decree No. 114 or the Pawnshop Regulation Act.

For purposes of determining the taxability of pawnshops, they should be classified as non-bank financial intermediaries within the purview of the 10% VAT under Section 108 of the 1997 NIRC, as ruled by the Supreme Court in the case of *First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue*[11], *viz:*

> At the time of the disputed assessment, that is, for the year 2000, pawnshops were not subject to 10% VAT under the general provision on "sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration x x x." **Instead, due to the specific nature of its business, pawnshops were then subject to 10% VAT under the category of non-bank financial intermediaries, as provided in the same Section 108 (A) xxx**
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> **The tax treatment of pawnshops as non-bank financial intermediaries is not without basis.**
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> R.A. No. 337, as amended, or the General Banking Act characterizes the terms banking institution and bank as synonymous and interchangeable and specifically include commercial banks, savings bank, mortgage banks, development banks, rural banks, stock savings and loan associations, and branches and agencies in the Philippines of foreign banks. R.A. No. 8791 or the General Banking Law of 2000, meanwhile, provided that banks shall refer to the entities engaged in the lending of funds obtained in the form of deposits. R.A. No. 8791 also included cooperative banks, Islamic banks and other banks as determined by the Monetary Board of the Bangko Sentral ng Pilipinas in the classification of banks.
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> Financial intermediaries, on the other hand, are defined as "persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others.
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> **It need not be elaborated that pawnshops are non-banks/banking institutions. Moreover, the nature of their business activities partakes that of a financial intermediary in that its principal function is lending.**

[11] G.R. No. 174134, July 30, 2008, 560 SCRA 620. See also Capital Equity Pawnshop Co., Inc. vs. Commissioner of Internal Revenue, C.T.A. EB No. 394, February 24, 2009.

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That pawnshops are to be treated as non-bank financial intermediaries is further bolstered by the fact that pawnshops are under the regulatory supervision of the *Bangko Sentral ng Pilipinas* and covered by its Manual Regulations for Non-Bank Financial Institutions. The Manual includes pawnshops in the list of non-bank financial intermediaries, *viz*:

$4101Q.1 *Financial Intermediaries*

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Non-bank financial intermediaries shall include the following:

(1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, **pawnshop**, money broker xxx."

Revenue Regulations No. 10-2004, in fact recognized these bases, to wit:

"SEC. 2. BASES OF QUALIFYING PAWNSHOPS AS NON BANK FINANCIAL INTERMEDIARIES. – Whereas, in relation to Sec. 2.3 of Rev. Regs No. 9-2004 defining "Non-bank Financial Intermediaries, the term "pawnshop" as defined under Presidential Decree No. 114 which authorized its creation, *to be a person or entity engaged in the business of lending money*, all fall within the classification of Non-bank Financial Intermediaries and therefore, covered by Sec. 4 of R.A. No. 9238.

This classification is equally supported by Subsection 4101Q.1 of the BSP Manual of Regulations for Non-Bank Financial Intermediaries and reiterated in BSP Circular No. 204-99, classifying pawnshops as one of Non-bank Financial Intermediaries within the supervision of the Bangko Sentral ng Pilipinas.[12] (Emphasis supplied.)

While it is true that pawnshops classified as non-bank intermediaries are generally subject to VAT under Section 108 of the 1997 NIRC, the suspension of levy, collection and assessment thereof took effect by virtue of R.A. No. 8424 from January 1, 1998 until December 31, 1999, R.A. No. 8761 *ge*

[12] *Id.* pp. 618-621.

covering January 1, 2000 to December 31, 2000, and R.A. No. 9010 pertaining to January 1, 2001 to December 31, 2002. The Supreme Court in the case of *First Planters Pawnshop, Inc.* further declared that:

> - **R.A. No. 8424 or the Tax Reform Act of 1997 likewise imposed a 10% VAT under Section 108 but the levy, collection and assessment thereof were again deferred until December 31, 1999;**
>
> - **The levy, collection and assessment of the 10% VAT was further deferred by R.A. No. 8761 until December 31, 2000, and by R.A. No. 9010, until December 31, 2002.**[13] (Emphasis supplied.)

In accordance with the Supreme Court's pronouncement in the *First Planters Pawnshop* case, and considering that the taxable period of the instant case involves year 2000 VAT on sales of services rendered by MRC, a non-bank financial intermediary, it should not be liable for such tax. Moreover, considering that MRC did not raise on appeal the issue on DST, Assessment Notice No. DS-61101-00-04-567 pertaining to deficiency DST assessment for taxable year 2000 has become final.

Concerning the second issue, the tax clearance[14] proffered by MRC does not specify the taxes paid and period covered. Thus, this Court cannot duly ascertain if MRC settled its VAT deficiency for taxable year 2000.

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The assailed Decision dated October 3, 2008 and

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[13] *Id.*p.616.
[14] *en banc* Docket, p. 55.

Resolution dated February 6, 2009 are **MODIFIED**. Assessment Notice No. VT-61101-00-04-567 as to MRC's 2000 VAT deficiency is **WITHDRAWN AND SET-ASIDE.** MRC's 2000 DST liability in the amount of P31,250.00, including 20% delinquency interest per annum from April 25, 2004 until full payment**, is AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice