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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MICHEL J. LHUILLIER PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6141

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 24 2001

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DECISION

Before Us for consideration is a Petition for Review filed on July 14, 2000, seeking to annul Assessment Notices No. 81-VAT-13-97-99-12-118 and 81-DST-13-97-99-12-119, issued by the Respondent against the Petitioner for alleged Value Added Tax and Documentary Stamp Tax deficiencies during taxable year 1997.

The assessments arose from the following antecedents:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines.

In its Amended Petition for Review, Petitioner averred that it received the questioned Assessment Notices for alleged non-payment of Value Added Tax and Documentary Stamp Tax from the Chief of the Assessment Division of Revenue Region No. 13, Cebu City on December 9, 2000.

On January 6, 2000, Petitioner filed with the Respondent a Motion for Reconsideration in accordance with Section 228 of the National Internal Revenue Code questioning the legality and validity of the assessments.

In a letter received by the Petitioner on May 29, 2000, Respondent denied Petitioner's Motion for Reconsideration. Hence this Appeal.

In its Petition for Review, Petitioner reiterates its stance *a quo* and argued that a pawnshop business is not liable to pay value added tax on its sale of rematados citing as basis therefor Section 105 of Title IV, Chapter I and Section 106 (A) of the Tax Code which provides, thus:

Section 105

"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.

Section 106 (A)

There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, **such tax to be paid by the seller or transferor**."

On September 12, 2000, Respondent filed his Answer to the Petition for Review and advanced the following Special and Affirmative Defenses, to wit:

"7. The petition alleges that petitioner received the assessments last November 19, 1999 and that on January 6, 2000, it filed a motion for reconsideration thereof (paragraphs 2 and 3, Petition). In other words, petitioner protested the assessments after the lapse of thirty (30) days from its receipt thereof. Hence, the assessments have become final and executory (Section 228, Tax Code) and, therefore, this Honorable Court has no jurisdiction to act on the petition (**Republic vs. Lim Tian Teng Sons & Co., Inc., 16 SCRA 584**).

8. Under Section 102 (a) of the Tax Code, as amended by R.A. No. 7716, the sale of services rendered by lending investors and services similar thereto is subject to 10% VAT on gross receipts

derived from said sale. Section 4.102-1 of Revenue Regulations No. 7-95 defines a "lending investor" as including "all persons, other than banks, non-bank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions, who make a practice of lending money for themselves or others at interest." Since the services of pawnshops are similar to those of lending investors, the sale of said services is subject to 10% VAT.

9. 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**).

10. The assessment was issued in accordance with law and regulations.

11. All presumptions are in favor of the correctness of tax assessments (**CIR vs. Construction Resources of Asia, Inc., 145 SCRA 671**).

It should be noted that the allegation of Respondent with respect to the lack of jurisdiction explained in Paragraph number 7 of the Answer is no longer considered an issue to be resolved in this case as the Petitioner has corrected the data in its Amended Petition for Review (see page 39, CTA Records). Moreover, the Parties, in their Joint Stipulation of Facts and Issues, have limited the issues to the following:

1. Whether or not Pawnshop business is subject to Value Added Tax under Section 102 (a) of the Tax Code.

2. Whether interest income is income from service or from forbearance of money.

3. Whether liquidated damages are income from services or a simple item of indemnification.

4. Whether pawnshop business is similar or akin to Lending Investor business.

5. Whether respondent is legally empowered to impose and charge Value Added Tax on the petitioner for the proceeds of the auction sale of pawned item.

6. Whether pawn ticket is subject to documentary stamp tax.

In its Memorandum, Petitioner argues that pawnshops are of a different class from that of a lending investor and, therefore, should be exempt from the payment of the Value Added Tax. This conclusion allegedly finds support in the provision of Section 102(a) of the Tax Code which does not express, whether directly or indirectly, that pawnshop business is subject to Value Added Tax.

To justify the assessment, Respondent, makes capital of the same provision of the Tax Code invoked by the Petitioner. However, Respondent opines that the enumeration of persons performing services for a fee in the said provision is merely intended to give examples of businesses subject to VAT on sale or exchange of services, hence, not exclusive. Moreover, Respondent submits that the legislative intent is not to limit the application of Section 112 (a) to those enumerated therein because the law speaks of all "kinds of services." Hence, since a pawnshop is engaged in the sale of services, it is subject to VAT under the aforesaid provision.

We find Respondent's assertions not plausible. Accordingly, We rule in favor of the Petitioner.

Time and again, this Court has consistently ruled that pawnshops are not in the same class as lending investors.

Apropos to this pronouncement are the following provisions of the Tax Code, thus:

"**Sec. 157. Words and Phrases defined.** – x x x

(u) "Lending investor" includes all persons who make a practice of lending money for themselves or others at interest.

Sec. 161. Fixed Taxes. – x x x

(3) Other fixed taxes. – x x x

(dd) Lending investors –

1. In chartered cities and first class municipalities, one thousand pesos;
2. In second and third class municipalities, five hundred pesos;
3. In fourth and fifth class municipalities and municipal districts, two hundred fifty pesos: **Provided**, That lending investors who do business as such in more than one province shall pay a tax of one thousand pesos.

x x x x x x x x x

Sec. 175. Percentage tax on dealers in securities, lending investors. – Dealers in securities shall pay a tax equivalent to six (6%) per cent of their gross income. Lending investors shall pay a tax equivalent to five (5%) per cent of their gross income. (Formerly Section 116.)

Presidential Decree 114 (Pawnshop Regulatory Act)

Sec. 3. Definitions. – As used in this decree, unless the context otherwise requires, the following terms shall have the following meanings:

"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.

x x x x x x x x x

Sec. 10. Rates of interest. – No pawnshop shall directly or indirectly stipulate, charge, demand, take or receive any higher rate or greater sum or value for any loan or forbearance than the rate allowed by the Usury Law for such transactions. x x x"

Seemingly, the theory of the Respondent jibes well with the aforequoted provision that pawnshops may be in the same class as lending investors since its principal activity is lending money at interest. Moreover, under Section 4.102-1 of Revenue Regulations No. 7-95 cited by the Respondent in his Memorandum, a lending investor is defined as including "all persons, other than banks, non-bank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions, who made a practice of lending money for themselves or others at interest. This definition coupled with Respondent's declaration in RMO 15-91 and RMC 43-91, which We quote hereunder, may bolster Respondent's theory, thus:

RMO No. 15-91, March 11, 1991

> "A restudy of P.D. 114 shows that the principal activity of pawnshops is lending money at interest and incidentally accepting a pawn of personal properties delivered by the pawner to the pawnee as security for the loan. Clearly, this makes pawnshop business akin to lending investor's business activity which is broad enough to encompass the business of lending money at interest by any person whether natural or juridical. Such being the case, pawnshops shall be subject to the 5% lending investor's tax based on their gross income pursuant to Section 116 of the Tax Code, as amended."

RMC No. 43-91, May 27, 1991

> "This Circular subjects to the 5% lending investor's tax the gross income of pawnshops pursuant to Section 116 of the Tax Code, and it thus revokes BIR Ruling Nos. 6-90, and VAT Ruling Nos. 22-90 and 67-90. In order to have a uniform cut-off date, avoid unfairness on the part of taxpayers if they are required to pay the tax on past transactions, and so as to give meaning to the express provisions of Section 246 of the Tax Code, pawnshop owners or operators shall become liable to the lending investors tax on their gross income beginning January 1, 1991. Since the deadline for the filing of percentage tax return (BIR Form No. 2529A-O) and the payment of the tax on lending investors covering the first calendar quarter of 1991 has already lapsed taxpayers are given up to June 30, 1991 within which to pay the said tax without penalty. If the tax is paid after June 30,

> 1991, the corresponding penalties shall be assessed and computed from April 21, 1991.
>
> Since pawnshops are considered as lending investors effective January 1, 1991, they also become subject to documentary stamp taxes prescribed in title VII of the Tax Code. BIR Ruling No. 325-88 dated July 13, 1988 is hereby revoked."

However, at this point, this Court is not yet inclined to abandon its previous findings that pawnshops are not in the same class as lending investors and therefore, should not be held liable for the payment of the 5% lending investor's tax.

In the case of **Trustworthy Pawnshop, Inc. vs. Collector of Internal Revenue, CTA Case No. 5691, March 7, 2000**, and in other similar cases, this Court emphatically ruled, thus:

> "If we go by the contention that pawnshops are lending investors, then Congress would not have been mistaken in treating the two separately under paragraphs (*dd*) and (*ff*) of Section 161 of the Tax Code, as amended, *supra*. Logic simply dictates that if by prior definition under Section 157 (u) of said Code pawnshops and lending investors are of the same class, then there is no rational basis for differentiating them under one heading later, except for the fact that they are dissimilar as tax subjects.
>
> Further analyzing said Section 161, *supra*, it appears that lending investors were imposed a graduated type of fixed taxes depending on the class of the city or municipality involved while pawnshops were differently levied a flat amount of tax. This particular observation bolster Our position that pawnshops are not similarly situated as lending investors. Congress would not have intended otherwise, because the act of segregating and imposing upon them unequal amount of taxes would transgress the fundamental rule on taxation on uniformity or equality enshrined under par. 1, Section 28 of Article VI of our Constitution. The rule requires that all subject or objects of taxation, similarly situated, are to be treated alike or put on equal footing both in privileges and liabilities (**Juan Luna Subdivision vs. Sarmiento, 91 Phil. 371**). It has also been interpreted to mean that all taxable articles or kinds of property of the same class shall be taxed at the same rate (**City of Baguio vs. de Leon, 25 SCRA 938**). Verily, Congress is presumed to have acted in full knowledge of this particular constitutional limitation when it classified pawnshops apart from lending investors."

Anent Respondent's reliance on RMO No. 15-91 and Section 4.102-1 of Revenue Regulations No. 7-95, suffice it to state that the Court of Appeals had the occasion to rule on the validity of RMO No. 15-91 declaring it as unconstitutional, the power to tax being vested solely with Congress. Similarly, We cannot admit Respondent's inference that pawnshops are similar to those of lending investors pursuant to Revenue Regulations No. 7-95, thus:

> "x x x. Revenue Circular Nos. 15-91 and 43-91 are not implementing rules but are new and additional measures which only congress is empowered to impose. Section 245 of the Tax Code has limited or confined petitioner's power to issuing rules and regulations to implement or carry into effect the provision of the Code in the enforcement of taxes therein, and petitioner cannot impose additional taxes not provided therein.
>
> Under the Constitution, the power to tax is solely vested in Congress. In issuing subject Revenue Circulars imposing new taxes against pawnshops, petitioner arrogated unto himself legislative powers, with grave abuse of discretion and in excess of jurisdiction." (**CIR vs. Hon. Andres Reyes, Jr., et. al. CA-GR No. 28824, December 23, 1993**).

Proceeding now to the validity of the imposition of the documentary stamp tax the provision of 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, <u>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</u>, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money <u>which shall be and intended only as security</u>, another by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates: x x x." (Underscoring Ours).

Analyzing carefully the aforecited provisions, 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 pawnbrokers "receipt" for a pawn. It is neither a security nor a printed evidence of indebtedness. Prescinding from this, 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, accordingly, such pawn ticket cannot be considered as a document subject to documentary tax (**Commissioner of Internal Revenue vs. Hon. Andres B. Reyes, Jr. CA-G.R. SP No. 28824 promulgated on December 23, 1993**).

Having found that the onus had been discharged satisfactorily by the Petitioner, We therefore declare that the assessments are void for lack of legal basis.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notices Nos. 81-VAT-13-97-99-12-118 and 81-DST-13-97-99-11-119 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(with Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
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