Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ANTAM PAWNSHOP CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7069

Members :

Castañeda, Jr., *Chairman*
Uy, and
Palanca-Enriquez, *JJ.*

Promulgated:

JUN 2 1 2005

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DECISION

UY, *J*.:

This Petition for Review seeks the cancellation of Assessment Notice No. 32-3000 dated December 19, 2003 assessing petitioner of deficiency value-added tax including compromise penalty in the total amount of P292,864.15 covering the taxable year 2000.

THE FACTS

The following are the undisputed facts of the case:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines engaged in the pawnshop business, with principal business address at 1658 España Street, Sampaloc, Manila.

Respondent, on the other hand, is the public official charged with the enforcement and administration of the internal revenue laws of the Philippines holding office at Bureau of Internal Revenue Building, Diliman, Quezon City.

On December 19, 2003, respondent, through Regional Director Teodorica R. Arcega of Revenue Region 6, Manila, issued Assessment Notice No. 32-3000 against petitioner for deficiency value-added tax (VAT) and compromise penalty for taxable year 2000 in the amounts of P276,864.15 and P16,000.00, respectively. Petitioner filed its written protest thereto on January 27, 2004 allegedly for lack of legal and factual basis.

Respondent, through Regional Director Arcega, in a Letter dated August 27, 2004, and received by petitioner on September 13, 2004, denied petitioner's protest and reiterated the assessment pursuant to Revenue Memorandum Circular No. 45-2001.

Subsequently on October 1, 2004, petitioner filed this petition seeking the cancellation of Assessment Notice No. 32-3000 dated December 19, 2004.

In his Answer, respondent alleges by way of Special and Affirmative Defenses, the following:

"7. The subject assessments are valid and correct and the petitioner has the burden of proof to impugn their validity (Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647). Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671); and assessments duly made by a BIR examiner and approved by her superior officers will not be disturbed (Gutierrez vs. Villegas, 8 SCRA 547).

8. 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 also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Tansportation, Co., 107 Phil 967 [1960]).

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

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

11. 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 those enumerated as exempt transactions. Neither are there any express provisions of law exempting pawnshops from VAT. Since pawnshop transactions are not among those exempt transactions, the same are subject to VAT on their gross receipts since they are clearly engaged in the performance of services.

12. Petitioner's contention to interpret the enumeration set forth under Section 108(A) of the 1997 Tax Code by applying the maxim 'expresio unius est expresio alterus' would create havoc instead of harmony in the present Philippine tax system and would only trigger unjustness, inequality and partiality in the enforcement of VAT laws, which means that those sale or exchange of services which are not included in the enumeration and those services which will be put up in the future which are not VAT exempt services shall not be subject to VAT." (Answer, Records, pp. 20-23).

On February 1, 2005, the parties submitted their "Joint Stipulation of Facts and Issues With Motion to Submit the Case After Filing of Memorandum" which was approved and granted by this Court in the Resolution dated February 7, 2005 (Records, p. 44).

Subsequently, the parties submitted their respective Memorandum: respondent submitted his Memorandum on March 7, 2005, while petitioner submitted its Memorandum on March 11, 2005 (*Records, pp. 50-57; 58-76, respectively*). Hence, this decision.

THE ISSUES

In the Joint Stipulation of Facts and Issues, the parties agreed on the following issues, to wit:

> "a.) Whether or not petitioner is liable for deficiency VAT in the amount of P276,864.15; and
>
> b.) Whether or not petitioner is liable for compromise penalty in the amount of a P16,000.00" (*Records, p.48*).

PETITIONER'S CLAIMS

Petitioner contends that pawnshops are not among the entities subject to VAT as referred and enumerated under Section 108 (A) of the National Internal Revenue Code (NIRC) OF 1997, or even prior laws before amendments thereto. Notwithstanding the long standing issue on the liability of pawnshops to VAT, it had never been included in the enumeration of persons subject to VAT under Section 108 of the Tax Code, despite several expansions and amendments made to the VAT law. Thus, services not enumerated under Section 108 (A) are not subject to VAT, even in the absence of an express provision in Section 109.

According to petitioner, pawnshops cannot be subjected to tax by mere implication, without violating the fundamental rule in construction of tax statutes prohibiting taxation by mere implication. Petitioner asserts that it is incumbent upon the taxing authority and not upon the taxpayer to show that the subject of the tax is clearly covered under the law, and the rule on statutory construction at this point bends in favor of the non-taxability of the subject, by virtue of strict interpretation on the imposition of taxes.

Petitioner also strongly argues that pawnshops are not lending investors, nor are they engaged in services similar to those provided by lending investor and cannot therefore be subject to VAT. Pawnshops cannot be considered lending investors because the nature of their businesses are different, which account for the evident dissimilarity in their treatment under tax laws.

RESPONDENT'S DEFENSES

Respondent maintains that pawnshops are covered by Section 108 (A) of the NIRC, because the said provision expressly states all kinds of services shall be subject to VAT except those VAT exempt and zero-rated VAT services. According to respondent, pawnshops are undoubtedly engaged in the sale of services, that is, lending money at interest to the general public with pawn delivered to the pawnshop as security. This act of lending money at interest constitutes a performance of a service for others for a fee, remuneration, or consideration which is subject to the payment of 10% VAT under Section 108 (A) of the 1997 Tax Code. The aforesaid provision expressly states that *all kinds of services* shall be subject to VAT except those VAT exempt and zero-rated VAT services, and the enumeration therein should not be considered as exclusive, meaning, other persons performing services for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT.

THIS COURT'S RULING

Focal to the resolution of the principal issue is the correct interpretation of the provisions of Sections 105 and 108(A) of the 1997 National Internal Revenue Code, found in Chapter I of Title IV thereof, pertaining to Imposition of Value Added Tax. The pertinent provisions of said sections read as follows:

> "**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."
>
> "The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods; properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716."
>
> "The phrase **'in the course of trade or business'** means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstick, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity."

x x x x

"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.

The phrase **'sale or exchange of services'** <u>means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration,</u> including those performed or rendered by construction and service 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 and water relative to their 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 or mental faculties. x x x x x." *(Underscoring supplied.)*

Clearly from the foregoing legal provisions, any person who, in the course of trade or business, renders services, shall be subject to the value added tax (VAT) imposed in Section 108 (A) of the 1997 Tax Code.

Petitioner is admittedly engaged in the pawnshop business. And 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."

Based on the foregoing definition, the principal activity of a pawnshop is lending money at interest on personal property delivered as security for the loan. The "act of lending money at interest" constitutes the performance of a service for a fee, remuneration or consideration for such service. In other words, the liability of pawnshop operators to pay the VAT does not depend on the classification of their business, but on the services they render.

Consequently, petitioner's claim that pawnshops are not lending investors has no bearing to its liability to pay value added-tax because as long as pawnshops are engaged in lending money on the security of personal property, they fall within the ambit of Section 105 of the 1997 Tax Code. And petitioner, being indubitably engaged in the pawnshop business, cannot escape liability to pay the VAT prescribed under Section 108 (A) of the 1997 Tax that value-added tax shall be levied, assessed and collected, 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"* encompasses the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration.

As correctly pointed out by respondent, the listing provided for in Section 108 (A) is intended merely to give examples of persons or businesses performing services for a fee, remuneration or consideration but the enumeration is not exclusive and other persons performing services for a fee, remuneration or consideration, who are not expressly mentioned in the enumeration, are also subject to VAT 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".

Additionally, the phrase "including" should be construed merely as an enlargement and not a 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.
>
> 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 which are 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]).***

It is well settled that tax exemptions are strictly construed against the taxpayer ***(Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639).*** In the absence of any clear provision of law exempting pawnshops from VAT, it is our conclusion that pawnshops are subject to VAT on their gross receipts considering that they are clearly engaged in the performance of services for a fee, remuneration or consideration.

In the case of ***Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation,*** **(G.R. No. 125355, March 30, 2000),** the Supreme Court ruled that the taxpayer, not falling within the exemptions mentioned under Section 109 of the Tax Code, is subject to VAT.

In said case, the High Tribunal held:

> "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." xxx
>
> xxx xxx xxx
>
> 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. ***As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.***
>
> 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, ***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.*** " (Ibid, underscoring supplied).

As mentioned earlier, petitioner maintains that pawnshops are not lending investors, nor are they engaged in services similar to those provided by lending investors, and therefore not liable for VAT. The issue of whether pawnshops are lending investors as to be subject to 5% lending investor's tax has been finally settled by the Supreme Court in the case of Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc. which held that pawnshops are not lending investors (406 SCRA 178). Reliance by petitioner on this case is misplaced because the imposition of VAT on pawnshops was never an issue in said case. On the other hand, the only issue in the instant petition is petitioner's liability to pay VAT for engaging in the pawnshop business, and does not at all involve the imposition of lending investor's tax.

Finally, the issue of whether petitioner is liable for compromise penalty, is ruled in the negative.

Compromise penalties are amounts collected by the BIR in lieu of criminal prosecution for violations committed by taxpayers, the payment of which is based on a compromise agreement validly entered into between the taxpayer and the Commissioner of Internal Revenue (***Collector of Internal Revenue vs. UST, 104 Phil. 1062***).

The case at bar is not a criminal action instituted against petitioner for non-payment of value-added tax deficiency, but an assessment issued by the Bureau of Internal Revenue against petitioner for deficiency VAT, which the latter protested. It is well settled that this Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer (***Philippine International Fair, Inc. vs. The Collector Of Internal Revenue, 4 SCRA 781***).

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, petitioner is **ORDERED TO PAY** the respondent the deficiency value-added tax in the amount of P276,864.15

for taxable year 2000, plus 20% delinquency interest per annum from January 23, 2004 until the amount is fully paid pursuant to Section 249(C) of the 1997 NIRC.

The amount of P16,000.00 imposed by way of a compromise penalty is hereby **DELETED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

JUANITO C. CASTAÑEDA, JR.
Chairman