REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CAPITAL EQUITY PAWNSHOP CO., INC., Petitioner,	**C.T.A. E.B. NO. 394 (C.T.A. CASE NO. 7033)**
	Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 2 4 2009

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed through registered mail[1] and duly received by this Court on June 17, 2007, seeking a review of the Decision dated February 6, 2008 and Resolution dated May 6, 2008, rendered by the First Division of this Court[2] (Court in Division) in C. T. A. Case No. 7033 entitled "Capital Equity Pawnshop Co., Inc., petitioner, vs. Commissioner of Internal Revenue,

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[1] Posted on June 10, 2008.

[2] Ponencia of Associate Justice Caesar A. Casanova, and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

respondent", pursuant to Section 18 of Republic Act (RA) No. 1125, as amended by RA No. 9282, the dispositive portions of which read as follows:

Decision promulgated on February 6, 2008:

> "**WHEREFORE**, the Petition for Review is granted insofar as the assessment for deficiency expanded withholding tax. Accordingly, the assessment in the amount of Five Thousand Five Pesos and Eighty One Centavos (P5,005.81) for deficiency expanded withholding tax against petitioner is hereby **WITHDRAWN** and **CANCELLED**.
>
> However, petitioner is hereby ordered to pay respondent the amount of **ONE HUNDRED TWENTY ONE THOUSAND FIFTY SEVEN PESOS AND EIGHTY SIX CENTAVOS (P121,057.86**) as deficiency income tax; **FIVE HUNDRED THOUSAND FOUR HUNDRED SIXTY SEVEN PESOS and FIFTY TWO CENTAVOS (P500,467.52)** as deficiency Value-Added Tax; and **SIXTY NINE THOUSAND THREE HUNDRED TWENTY FOUR PESOS AND EIGHTY THREE CENTAVOS (P69,324.83)** as deficiency documentary stamp tax; plus 20% delinquency interest from February 24, 2004 until the amounts are paid in full pursuant to Section 249 of the Tax Code.
>
> **SO ORDERED**."

Resolution promulgated on May 6, 2008:

> "**WHEREFORE**, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

As found by the Court in Division, these are the undisputed facts.

Petitioner, Capital Equity Pawnshop Co., Inc., a corporation duly existing and organized under and by virtue of the laws of the Republic of the Philippines, is engaged in the pawnshop business, with principal business address at the 8th Floor Builder's Center Building, 170 Salcedo Street, Legaspi Village, Makati City. Respondent, Commissioner of Internal

Revenue, on the other hand, is the public official charged with the enforcement and administration of the internal revenue laws of the Philippines, who holds office at the BIR Building, Diliman, Quezon City.

On January 23, 2004, respondent, through then Acting Regional Director Anselmo G. Adriano, of Revenue Region 8, Makati, issued a Formal Assessment Notice (FAN) against petitioner for deficiency income tax in the amount of P131,229.26; value-added tax (VAT) in the amount of P567,502.62; expanded withholding tax (EWT) in the amount of P5,005.81; and documentary stamp tax (DST) in the amount of P78,569.83 for taxable year 2000. Thereafter, petitioner filed its written protest of the FAN on February 2, 2004[3] and the same was denied by respondent on July 14, 2004.

Thus, on August 11, 2004, petitioner filed a Petition for Review of the said denial with the Court in Division docketed as C.T.A. Case No. 7033.

In the Decision promulgated on February 6, 2008,[4] the Court in Division ordered the withdrawal and cancellation of the assessment against petitioner for deficiency expanded withholding tax in the amount of P5,005.81 on the ground that the amount of P61,936.52 representing 10% VAT on rentals paid by petitioner to its lessors is not subject to EWT. However, petitioner was ordered to pay respondent the amounts of P121,057.86 as deficiency income tax; P500,467.52 as deficiency VAT; and P69,324.83 as deficiency DST plus 20% delinquency interest from February 24, 2004 until the full payment of the said amounts.

[3] Docket, pp. 98-101.
[4] Ibid., at pp. 46-67.

The Court in Division found that petitioner failed to substantiate its claimed deductions which resulted to a deficiency income tax assessment as testimonial evidence, without the supporting documentary evidence, was found by the court *a quo* insufficient to prove its entitlement to such deductions in the computation of its taxable income. As regards the deficiency VAT, the Court in Division rationalized that the business of petitioner falls under Section 108 (A) of the National Internal Revenue Code (NIRC) of 1997 under the phrase "sale or exchange of services" and considering that pawnshops are engaged in the sale of service, hence, the same are subject to value-added tax.

Finally, the Court in Division also held that pawn tickets are subject to DST in accordance with the pronouncements laid down in *Michel J. Lhuillier Pawnshop Inc. vs. Commissioner of Internal Revenue* (G.R. No. 166786, May 3, 2006). Thus, the assessments as regards VAT, DST and the deficiency income tax were upheld by the Court in Division in the assailed Decision.

Petitioner's Motion for Partial Reconsideration filed on February 26, 2008 seeking the partial reconsideration of the aforesaid Decision was denied in the assailed Resolution dated May 6, 2008.[5]

Hence, this recourse before the Court *En Banc* praying that the assailed Decision and Resolution dated February 6, 2008 and May 6, 2008, respectively, be reversed and set aside; and consequently, the assessments against petitioner for deficiency VAT, DST and income tax for taxable year 2000 be cancelled.

[5] Id., at pp. 68-71.

On August 1, 2008, respondent filed a Manifestation stating that considering the arguments raised by petitioner in its Petition for Review filed in the Court *En Banc* are mere rehash of its arguments in its Motion for Partial Reconsideration filed in the Court a quo, respondent is adopting his Opposition to petitioner's Motion for Partial Reconsideration filed on April 21, 2008 as his Comment to the present petition.

In the Resolution of the Court *En Banc* dated August 12, 2008,[6] both parties were ordered to file their memoranda within thirty (30) days from notice. As both parties failed to file their respective memorandum despite notice, this case was deemed submitted for decision in the Resolution dated October 7, 2008.[7]

Hence, this Decision.

THE ISSUES

The issues based on the assigned errors raised by petitioner in the instant petition are as follows:

A. Whether or not the Court in Division erred in finding that respondent's disallowance of certain expenses were proper and in order;

B. Whether or not the Court in Division erred in declaring that the P121,694.48 should be considered as petitioner's Net Operating Loss Carry-Over; and

C. Whether or not the Court in Division erred in declaring that petitioner is subject to deficiency income tax, VAT and DST for taxable year 2000.

THE COURT EN BANC'S RULING

The Petition for Review is partly meritorious.

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[6] Id., at p. 275.
[7] Id., at p. 282.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review, together with the attachments thereto, readily reveal that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the Court in Division that had already been exhaustively discussed and passed upon in the assailed Decision and Resolution promulgated on February 6, 2008 and May 6, 2008, respectively.

However, for purposes of further elucidating the matters raised by petitioner, these shall be discussed in seriatim.

Deficiency Income Tax

As regards the deficiency income tax, petitioner argues that the claimed expenses are ordinary and necessary expenses incurred in the operation of the business which were fully substantiated by sufficient evidence. Petitioner maintains that the Consolidated Working Papers of petitioner clearly enumerate each document examined by the External Auditor to substantiate each expense. Further, petitioner emphasizes that the testimony of its External Auditor is not self-serving. And lastly, the amount of P121,694.48 which was considered by the Court in Division as Net Operating Loss Carry-over (NOLCO) should be a Net Loss sustained by petitioner for taxable year 2000, to which various disallowances had already been added.

We uphold the Court in Division's findings that petitioner is liable for deficiency income tax as it failed to present documentary proof of its claimed deductions as well as the income tax returns for the succeeding three taxable years in support of its various claims with regard to the assessment against it for deficiency income tax. It must be noted that the most competent evidence must be adduced and presented to prove the allegations in the complaint, petition, or protest before a judicial court.[8]

In the instant case, the pertinent documents such as official receipts and invoices which are the best pieces of evidence to prove petitioner's claimed expenses were not presented. The Consolidated Working Papers prepared by petitioner's external auditor cannot replace pertinent documents as competent evidence to prove its expense deductions. Neither does the testimonial evidence by petitioner-hired auditor suffice to prove its claim.

It is basic that in order to disprove or assail deficiency assessments in tax cases, testimonial evidence must be supported by documentary evidence, such as the invoices, receipts, and returns, which must all be produced during trial. The Supreme Court in fact emphasized the superiority of written evidence over oral in this wise:

> "xxx These declarations unfortunately fail to hurdle judicial inspection, proceeding from the principle that **a party's evidence is 'of necessity subject to a rigid scrutiny' when he possesses, but does not produce, documentary evidence which, would be far more satisfactory**. We are thus vividly and fittingly reminded of the proverbial words of Mr. Justice Story that:
>
> > "Naked statements must be entitled to little weight when the parties hold better evidence behind the scenes" and
> >
> > "A party's nonproduction of a document which courts almost invariably expect will be produced 'unavoidably throws a suspicion over the cause."
>
> Corollary to this is that the presumption is always and inevitably against a litigant who fails to furnish evidence within his reach,

[8] Atlas Consolidated Mining Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.

and it is stronger when the documents, writings, etc., would be conclusive in establishing his case. **This is indeed an occasion to emphasize once a gain that the superiority of written evidence, compared with oral, is so pronounced, obvious and well-known, that in most cases the deliberate and inexcusable withholding of the written evidence, and effort to secure favorable consideration of oral testimony in the place of it, is an affront to the intelligence of the court.**[9]" *(Emphasis ours)*

Deficiency Documentary Stamp Tax

The issue on whether or not a pawn ticket is subject to documentary stamp tax has been settled by the Supreme Court in ***Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue***,[10] which declared that the subject of DST is not limited to the document alone. Pledge, which is an exercise of a privilege to transfer obligations, rights or properties incident thereto, is also subject to DST. All Pledges are subject to DST, unless there is a law exempting them in clear and categorical language. This explains why the Legislature did not see the need to explicitly impose a DST on pledges entered into by pawnshops. These pledges are already covered by Section 195 and to create a separate provision especially for them would be superfluous.[11]

Under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bench, should be decided in the same manner.[12]

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[9] Republic of the Philippines vs. Sandiganbayan, Sipalay Trading Corporation and Allied Banking Corporation, G.R. No. 112708-09, March 29, 1996.
[10] G.R. No. 166786, May 3, 2006, 489 SCRA 147.
[11] G.R. No. 166786, September 11, 2006.
[12] Commissioner of Internal Revenue vs. Trustworthy Pawnshop, Inc., G.R. No. 149834, May 2, 2006, 488 SCRA 538,545.

Deficiency Value Added Tax

The determination of petitioner's tax liability depends on the tax treatment of a pawnshop business.

Section 3 of P.D. No. 114 (*The Pawnshop Regulations Act*) defines a pawnshop as 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, pawnbrokers or pawn brokerage. Apparently from this definition, pawnshops are engaged in the business of lending money at interest, which constitutes the performance of a service for a fee, remuneration or consideration for such service.

Section 105 of the NIRC of 1997 provides that 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 said Code. And considering that pawnshops are engaged in the business of lending money at interest, the same constitutes the performance of a service for a fee, remuneration or consideration for such service. As such, petitioner, in operating as a pawnshop, is liable to pay VAT for the sale of services.

The pronouncement of the Supreme Court in the case of ***First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue***,[13] settled the issue with respect to the imposition of VAT on pawnshop businesses, and extensively discussed the same in the following fashion:

> "The Court finds that pawnshops should have been treated as non-bank financial intermediaries from the very

[13] G.R. No. 174134, July 30, 2008.

beginning, subject to the appropriate taxes provided by law, thus —

- Under the National Internal Revenue Code of 1977, pawnshops should have been levied the 5% percentage tax on gross receipts imposed on bank and non-bank financial intermediaries under Section 119 (now Section 121 of the Tax Code of 1997);

- With the imposition of the VAT under R.A. No. 7716 or the EVAT Law, pawnshops should have been subjected to the 10% VAT imposed on banks and non-bank financial intermediaries and financial institutions under Section 102 of the Tax Code of 1977 (now Section 108 of the Tax Code of 1997);

- This was restated by R.A. No. 8241, which amended R.A. No. 7716, although the levy, collection and assessment of the 10% VAT on services rendered by banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions, were made effective January 1, 1998;

- 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;

- With no further deferments given by law, the levy, collection and assessment of the 10% VAT on banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions were finally made effective beginning January 1, 2003;

- Finally, with the enactment of R.A. No. 9238, the services of banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions were specifically exempted from VAT, and the 0% to 5% percentage tax on gross receipts on other non-bank financial intermediaries was reimposed under Section 122 of the Tax Code of 1997.

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' as defined under Section 108 (A) of the Tax Code of 1997, which states:

'"sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration . . . .' 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), which reads:

> 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' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including . . . **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. The phrase 'sale or exchange of services' shall likewise include: . . . (Emphasis and underscoring supplied)

The tax treatment of pawnshops as non-bank financial intermediaries is not without basis.

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 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.

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.'

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.

A pawnshop's business and operations are governed by Presidential Decree (P.D.) No. 114 or the Pawnshop Regulation Act and Central Bank Circular No. 374 (Rules and Regulations for Pawnshops). Section 3 of P.D. No. 114 defines pawnshop as '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 pawn brokerage.'

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 of Regulations for Non-Bank Financial Institutions. The Manual includes pawnshops in the list of non-bank financial intermediaries, viz.:

> § 4101Q.1 Financial Intermediaries. —
>
> xxx xxx xxx
>
> 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 . . . . (Emphasis supplied)

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*.

Ultimately, R.A. No. 9238 categorically confirmed the classification of pawnshops as non-bank financial intermediaries.

Coming now to the issue at hand — Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; **however, with the levy, assessment and collection of VAT from non-bank financial intermediaries being specifically deferred by law, then petitioner is not liable for VAT during these tax years**. But with the full implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003, petitioner is liable for 10% VAT for said tax year. And beginning 2004 up to the present, by virtue of R.A. No. 9238, petitioner is no longer liable for VAT but it is subject to percentage tax on gross receipts from 0% to 5%, as the case may be." *(Emphasis and Underscoring Ours)*

In fine, when the subject disputed assessment for VAT in the amount of P567,502.62 for the taxable year 2000 were issued against petitioner by respondent, pawnshops were subjected to 10% VAT under the category of non-bank financial intermediaries. However, as precisely discussed in the above quoted decision of the Supreme Court in ***First Planters Pawnshop Inc.***, the levy, collection and assessment of the 10% VAT was deferred by R.A. No. 8761 until December 31, 2000, and subsequently by R.A. No. 9010, until December 31, 2002. Hence, petitioner is not liable for VAT during the taxable year 2000 pursuant to the aforesaid ruling of the Supreme Court.

In light of the foregoing consideration, We are thus constrained to reverse the Court in Division's findings against petitioner for deficiency VAT for taxable year 2000.

WHEREFORE, premises considered, the instant petition is hereby **PARTIALLY GRANTED.** The Decision dated February 6, 2008 and Resolution dated May 6, 2008 of the Court in Division is **MODIFIED** to the effect that respondent's assessment for deficiency VAT in the amount of **P500,467.52** for taxable year 2000 is **CANCELLED** and **SET ASIDE**; while the assessments for deficiency income tax in the amount of **P121,057.86** and documentary stamp tax in the amount of **P69,324.83**, inclusive of 20% delinquency interests from February 24, 2004 until full payment, are **UPHELD.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ON LEAVE
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice