REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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FIRST DIVISION

KWIK LOANS PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6571

COMMISSIONER OF INTERNAL, REVENUE,
Respondent.

Promulgated:
OCT 2 0 2004

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DECISION

This is a judicial appeal from the decision of the respondent holding petitioner liable for the amount of P2,484,769.71 as deficiency value-added tax for taxable year 2000.

The antecedent facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the Philippine laws, engaged in the pawnshop business, with principal place of business at Door 2, Lacson-Gorres Bldg., Colon Street, Sto. Nino, Cebu City *(p.2, Petition for Review)*.

On May 7, 2002, petitioner received a Preliminary Assessment Notice and Details of Discrepancy from the Regional Director of Revenue Region No. 13, Cebu City, demanding payment of the amount of P2,424,542.00 as deficiency value-added tax (VAT) for the taxable year 2000 *(p.134, BIR Records)*. Petitioner filed its letter protest against said notice on May 28, 2002, questioning the legality of the imposition of VAT to pawnshops *(p.153, BIR Records)*.

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On August 27, 2002, petitioner received a Final Assessment Notice dated July 22, 2002 issued by respondent, including the Formal Letter of Demand and Details of Discrepancy demanding payment of the amount of P2,484,769.71 as deficiency VAT under Assessment Notice No. 81-vat-13-2000-2002-7-191 *(Annex A, Petition for Review)*. Also, on the same date, petitioner received a letter of denial from the respondent *(p.158, BIR Records)* reiterating therein that petitioner is liable for deficiency VAT and advising the latter to pay the assessed amount of P2,424,542.00.

On August 29, 2002, petitioner filed a Motion for Reconsideration of respondent's letter of denial and final amount notice questioning the legality and validity of the assessment *(Annex C, Petition for Review)*. Petitioner received the final decision of respondent denying the said motion for reconsideration on October 21, 2002 *(Annex D, Petition for Review)*.

Hence, on November 19, 2002, petitioner filed the instant petition by registered mail, seeking for the reversal of the said decision of the respondent by alleging, among others, that Section 108 (A) of the 1997 Tax Code does not include pawnshop businesses as being subject to VAT.

By way of an Answer filed on January 15, 2003, respondent asserted the following Special and Affirmative Defenses, and contended that:

3. Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration. Its gross receipts derived from such services are subject to the 10% value-added tax (VAT) imposed under Section 108 (A) of the Tax Code.

4. Interest on pledge loans and past due loans and liquidated damages are part of petitioner's gross receipts subject to VAT.

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

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6. All presumptions are in favor of the correctness of tax assessments.

The parties filed their "Joint Stipulation of Facts" on April 21, 2004 manifesting their mutual agreement on the facts and issues involved in this case, to wit:

SUMMARY OF JOINTLY STIPULATED FACTS

1. Parties stipulated on their respective legal capacities.

2. Parties stipulated that the petition was timely filed and that the same was filed in accordance with the requirement of the Tax Code.

3. Parties stipulated that the period for the government to make assessment has not prescribed.

4. Parties stipulated that the computation of VAT is by multiplying the base with 1/11.

5. Parties stipulated that in bank business, banks receive deposits and investments from its depositors and investors and service these accounts by extending the same as credit/loan to the public and/or invest the same to profitable ventures and the likes.

6. Parties stipulated that pawnshop business do not engage into the same or similar activities of that of banks.

7. Parties stipulated that financial institutions receive investments from its clienteles and service the said investments by extending the same to its borrowers and business debtors.

8. Parties stipulated that pawnshop business (sic) do not engage into the same or similar activities of that of financial institutions.

STIPULATED ISSUES

1. Whether pawnshop business is that of service or mere forbearance of money.

2. Whether pawnshop businesses are subject to VAT on sale of services under Section 108 (A) of the NIRC.

3. Whether pawnshop business is akin to a lending investor business.

4. Whether interest on pledge loans, past due loans and liquidated damages are income from service or a simple item of indemnification, and whether the same is part of petitioner's gross receipts subject to VAT.

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.

Interestingly, the case under consideration raises issues identical to the one already resolved by this court, more specifically in the case entitled ***Kwik Loan Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6424, promulgated on April 21, 2003***. Accordingly, this court will resolve said issues in the same fashion and will invoke the same precedents as it did in the aforecited case.

The court notes that the first three (3) stipulated issues are interrelated or intertwined hence, discussion of said issues will be tackled jointly for convenience and brevity.

At the outset, it must be stated, that petitioner's contention that a pawnshop business is a business of forbearance of money and not engaging in the sale of service, and therefore not subject to VAT, does not hold favor with this court.

We have always been guided by the principles laid down in the case of ***Commission of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc., CA-G.R. Sp No. 70319, May 13, 2003***, when it enunciated that:

> Section 105 of the National Internal Revenue Code (NIRC) subjects "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 to a value-added tax (VAT)". While Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services

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for others for a fee, remuneration or consideration". It includes the services enumerated in the aforementioned section and similar services regardless of whether or not the performance thereof calls for the exercise or use of physical or mental faculties. The wordings of the definition of the phrase "sale or exchange of services" are unambiguous. It encompasses the performance of all kinds of services for a fee, remuneration or consideration.

Thus, the sale or exchange of services is subject to 10% VAT. Indeed, for as long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.

Section 3 of Presidential Decree No. 114 defines a pawnshop, thus:

"Pawnshop shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans."

From the foregoing definition, the fact that, the principal activity of a pawnshop is lending money at interest on the security of personal property, is instantly recognizable. Needless to state, the act of lending money at interest constitutes a performance of a service for a fee, remuneration or consideration.

The phrase "all kinds of services" as stated in the second paragraph of Section 108 (A) of Republic Act No. 8424 is broad enough to cover the kind of service which is provided by pawnshops to their borrowers, that is lending money in consideration of personal property delivered as security. Hence, a pawnshop is engaged in the sale of services that is subject to VAT under Section 108 (A) of the Tax Code, although it is not specifically mentioned in the law. *(Underscoring supplied)*

Clearly then, pawnshops are subject to value-added tax.

Relevant to the present discussion, petitioner in its Memorandum dated December 22, 2003 questioned the aforequoted jurisprudence for being merely pronouncements made by this court and by the Honorable Court of Appeals, and thus should not have been made the bases of respondent's arguments as the same do not set a precedence. It further emphasized that the arguments raised on said

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decisions could not stand against the arguments of the petitioner, which are based on a decision of the Honorable Supreme Court.

The court disagrees.

Article 8 of the New Civil Code clearly provides that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form as part of the legal system of the Philippines".

This court confirms the position of the petitioner in implying that the term "judicial decisions" referred to in the abovequoted provision refer to those enunciated by the Honorable Supreme Court. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings ***(Ang Ping vs. Regional Trial Court of Manila, Branch 40, G.R. No. 75860, September 17, 1987)***.

However, be it noted that in the landmark case of ***Teodora L. Vda. De Miranda y Otros vs. Feliciano Imperial y Juana de Imperial, No. 49090, February 28, 1947 (77 Phil. 1066)***, it was ruled that only the decisions of the Supreme Court, and unreversed decisions of the Court of Appeals on cases of first impression, establish jurisprudence or doctrines in the Philippines *(Paras, Civil Code of the Philippines, Book I, 13th Ed., 1994, p.61).* Furthermore, as a matter of principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject unless there has been an abuse or improvident exercise of authority ***(Luzon Stevedoring Corp. vs. Court of Tax***

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***Appeals & The Commissioner of Internal Revenue, L-30232, July 29, 1988)**.*
(Underscoring supplied)

Although decisions enunciated by competent courts, other than the Supreme Court, may be considered only persuasive in nature, "this rule does not militate against the fact that a conclusion or pronouncement of the Court of Appeals which covers a point of law still undecided in the Philippines may still serve as a *judicial guide* to the inferior Courts. It is even possible that such conclusion or pronouncement can be raised to the status of a doctrine, if after it has been subjected to test in the crucible of analysis and revision, the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence ***(Teodora L. Vda. De Miranda y Otros vs. Feliciano Imperial y Juana de Imperial, supra; Gaw Sin Gee v. Market Master of the Divisoria Market, et al., C.A., 46 O.G. 2617 cited in Paras, Civil Code of the Philippines, Book I, 13th Ed., 1994, pp.64-65)**.*"

Furthermore, the subject decision promulgated by the Court of Appeals in the case of ***Commission of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc., supra***, is not in conflict with the Supreme Court's decision cited by the petitioner. Thus, not only the respondent but the court itself could apply the previous rulings and conclusions made by this court and the Court of Appeals which have not yet been reversed by the Supreme Court for the purpose of other courts' *judicial guide*.

Now, to further strengthen its claim, petitioner argued that the aforequoted provision of law does not expressly provide for the imposition of VAT on pawnshop businesses. Thus, to subject pawnshop businesses to VAT would be violative of the

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doctrine that the imposition of tax must be clearly and unmistakably provided in the tax law.

This court is not persuaded.

Time and again, this court has maintained its position on the matter, wherein it pronounced, that:

> From the wordings of Section 108 (A) of the NIRC, it is clear that the intention of the legislature is not to limit its application to those enumerated therein, nor exclude other kinds of services performed for a fee, remuneration or consideration. The use of the word "including" in the statute is indicative of the intention to enlarge rather than to limit its coverage. And petitioner's attempt to restrict its application to those categorically mentioned clearly disagrees with the very import of the phrase "all kinds of services" as used in the above-quoted provisions. xxx ***(Regional Pawnshop, Inc. vs. Bureau of Internal Revenue, South Solano, Nueva Viscaya, CTA Case No. 6709, August 9, 2004).***
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> From the plain language of the law, the sale or exchange of services is subject to VAT and the phrase "sale or exchange of services" encompasses the performance of all kinds of services for others for a fee, remuneration or consideration. The enumeration of persons performing services for a fee, remuneration or consideration, such as construction and service contractors, stock, real estate, commercial, customs and immigration brokers, etc., is merely to give examples of businesses performing services for a fee, remuneration or consideration that are subject to VAT. The enumeration is not exclusive, which means that other persons performing services for a fee, remuneration or consideration, who are not expressly mentioned in the enumeration, are also subject to VAT. In the case of ***Gomez vs. Ventura, 54 Phil. 726***, it was ruled that:
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> > "xxx The maxim *expressio unius est exclusio alterius* 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. It does not apply when the words are mentioned by way of example, or to remove doubts (See Cyc., 1122 xxx.)."
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> Section 108 (A) of the 1997 Tax Code 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" ***(Cebu Mabuhay Pawnshop, Inc. vs. Commissioner of Internal***

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Revenue, CTA Case No. 6266, March 25, 2004; Regional Pawnshop, Inc. vs. Bureau of Internal Revenue, South Solano, Nueva Viscaya, supra; Kwik Loan Pawnshop, Inc. vs. Commissioner of Internal Revenue, supra). *(Underscoring supplied)*.

In addition, 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). ***(Kwik Loan Pawnshop, Inc. vs. Commissioner of Internal Revenue, supra)***

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In this respect, it is important to stress once again, that tax exemptions are strictly construed against the person or entity claiming the same being regarded as in derogation of sovereign authority ***(Commissioner of Internal Revenue vs. Procter and Gamble Phil. Mfg. Corp., 204 SCRA 377; Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., 309 SCRA 87; Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639)***. This court is compelled to reiterate its dissertation in its decision on the subject matter, wherein it declared that:

> Furthermore, Section 109 [formerly Section 103] of the Tax Code, as amended, enumerates the transactions that are exempt from VAT. Pawnshop transactions are not among the exempt transactions under the said section. Neither are there any express provisions of law exempting pawnshops from VAT. Since the transactions of pawnshops are not among those enumerated in Section 109 or any other express provision of law as VAT-exempt, it follows that the same are subject to VAT under Section 108 (A) ***(Cebu Mabuhay Pawnshop, Inc. vs. Commissioner of Internal Revenue, supra)***. It is decretal that tax exemptions are strictly construed against the taxpayer. 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 ***(Kwik Loan Pawnshop, Inc. vs. Commissioner of Internal Revenue, supra)***.

It is worthy to note that petitioner's reliance on the ruling enunciated in the case of ***Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003***, wherein it was ruled that "while it is true that pawnshops are engaged in the business of lending money, they are not considered 'lending investors' for the purpose of imposing the 5% percentage taxes", to bolster its claim is misplaced.

The aforementioned case involves a different issue, as pointed out by petitioner itself, *the imposition of the 5% lending investor's tax* under the then Section 116 of the NIRC of 1977. This is completely different with the subject matter at hand, particularly *the imposition of the 10% VAT*. Section 116 of the old Tax Code had in fact been repealed upon the effectivity of R.A. No. 7716 (the Expanded VAT Law) on January 1, 1996. Indubitably therefore, petitioner's contention has no legal ground for this court's consideration. Besides, the issue of distinction between lending investors and pawnshops has become moot and academic upon the implementation of the EVAT Law abovementioned.

Recalling this court's decision in the case of ***Kwik Loan Pawnshop, Inc. vs. Commissioner of Internal Revenue, supra,*** we quoted the ruling of the Court of Appeals in the case *Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., C.A.-G.R. SP No. 68180, February 10, 2003), viz:*

> **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.** xxx
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> **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 subjected to VAT.** *(Emphases supplied)*

As a matter of fact, the same contention has been raised in the case of ***RD Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6531, April 15, 2004***, wherein we elucidated, that:

> We concur with petitioner when it argued that pawnshops and lending investors are dealt with differently. However, as held in the most recent case of ***Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.***, G.R. No. 150947, July 15, 2003, the

Supreme Court ruled that pawnshops are not considered as "lending investors" only for the purpose of imposing the 5% percentage taxes, x x x

Nowhere in the aforecited case did the Highest Tribunal rule that pawnshops are not liable to value-added tax pursuant to Section 108(A) of the 1997 Tax Code. The 5% percentage tax is definitely different from the value-added tax. The issue raised and resolved by the Honorable Supreme Court dealt with the 5% lending investor's tax, and thus, it would be incorrect to assume that the same resolution also applies to the issue of the value-added tax liability of pawnshops, under the provisions of Section 108 (A) of the 1997 Tax Code. (*Underscoring supplied)*

Moreover, this court has invariably ruled that pawnshops are subject to VAT on sale of services as provided for under Section 108 (A) of the 1997 Tax Code. Said ruling finds support in the recent decisions laid down by this court, to wit: ***First Express Pawnshop Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6529, September 24, 2004; Network Pawnshop, Inc. vs. Bureau of Internal Revenue, Tuguegarao City, CTA Case No. 6727, September 23, 2004; Jewel Pawnshop Corp. vs. Commissioner of Internal Revenue, CTA Case Bi, 6824, September 14, 2004; Forum Pawnshop, Inc. vs. Bureau of Internal Revenue, Tuguegarao City, CTA Case No. 6718, September 6, 2004 and Intergrity Pawnshop, Inc. vs. Bureau of Internal Revenue, Karuhatan Road, Valenzuela City, CTA Case No. 6721, September 6, 2004***, among others. This much is a settled matter.

Section 108 (A) of the Tax Code provides:

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 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 of 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. xxx *(Underscoring supplied)*

After the lengthy and exhaustive discussion on the correct interpretation of Section 108 (A) of the 1997 Tax Code, which clarifies the first three (3) issues raised in the case at bar, this court will now proceed to the fourth issue of whether interest on pledge loans, past due loans and liquidated damages are income from service or a simple item of indemnification, and whether the same is part of petitioner's gross receipt subject to VAT.

Petitioner argued that interest on pledge loans and past due loans are not subject to VAT for the same are not income/receipt arising from sale or exchange of services but are compensation for forbearance of money. Likewise, liquidated damages are not income from sale or exchange of services but arise from breach of contract committed by its clients when the latter incur in delay in delivering or paying the amount they borrowed.

Considering that the premise insisted upon by petitioner is basically anchored on its proposition that a pawnshop business is a business of forbearance of money, we have no choice but to deny outright this petition on said ground as previously discussed by this court.

As correctly pointed out by the respondent in his Memorandum filed on December 2, 2003, this court has already passed upon and finally settled said identical issue elevated in the case of ***Kwik Loan Pawnshop, Inc. vs. Commissioner of Internal Revenue, supra***, enunciating:

> By the very nature of the pawnshop business, money is being lent secured on personal property. **The interest on pledge loans and past due loans are not compensation for forbearance of money. The same is true with liquidated damages in case the pawner fails to pay the borrowed money on time.** Said loan having been secured on personal property, the pawnshop operator does not suffer any damage if ever the pawner defaults in the payment of the borrowed money. This is because in the pawnshop business, the loaned money is always very much lower than the actual worth of the personal property pawned.
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> **As regards the sale of the pawned items, what is being taxed by the respondent is the gain on auction sale and not the auction *per se*.** But more importantly, gross receipts is defined in Section 108 as follows:
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>> "The term '*gross receipts*' means the <u>total amount of money or its equivalent</u> representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced <u>payments actually or constructively received</u> during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax." *(Emphasis and underscoring supplied)*
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> Thus, all interest income, liquidated damages and gains from auction sale of pawned items actually or constructively received by petitioner, *having been derived as an intrinsic part of the pawnshop business*, form part of the gross receipts of pawnshops subject to VAT. *(Emphasis supplied)*

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From the abovequoted ruling, this court has also clarified that the respondent's power to impose and charge value-added tax on the gains/proceeds of the auction sale of pawned item is recognized for being consistent with the discussion elaborated above.

In a capsule form, this court reiterates its consistent rulings that (1) pawnshops are subject to VAT on sale of services as provided for under Sec. 108 (A) of the 1997 Tax Code; and (2) all interest income, liquidated damages and gains from auction sale of pawned items actually or constructively received by pawnshops form part of their gross receipts and are subject to VAT.

WHEREFORE, the instant petition is hereby **DENIED** for lack of merit. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency value-added tax for the taxable year 2000 in the total amount of P2,484,769.71, plus 25% surcharge and 20% delinquency interest from November 20, 2002 until fully paid pursuant to Sections 248 and 249 of the 1997 Tax Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division