REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MICHEL J. LHUILLIER PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5690

COMMISSIONER OF INTERNAL REVENUE,

Promulgated:
DEC 13 2000

x - x

DECISION

This is a petition which seeks for the declaration of nullity of Assessment No. 81-PT-13-94-97-9-118 issued by Respondent against Petitioner on September 11, 1997 in the amount of P3,360,355.11, representing deficiency percentage tax, inclusive of increments, for the year 1994.

The facts of the case are as follows:

Petitioner is a corporation duly organized and existing under Philippine laws. It is engaged in the pawnshop business, with principal business address at M. L. Bldg., B. Benedicto St., North Reclamation Area, Cebu City.

On March 11 and May 27, 1991, the then Commissioner of Internal Revenue Jose U. Ong issued Revenue Memorandum Order (RMO) No. 15-91 and Revenue Memorandum Circular (RMC) No. 43-91, respectively, subjecting all pawnshops to a five (5%) percent lending investor's tax in accordance with Section 116 of the Tax Code, which provides:

> **"Section 116. Percentage tax on dealers in securities, lending investors.** – x x x Lending investors shall pay a tax equivalent to five (5) per cent of their gross income."

Thus, on September 11, 1997, pursuant to the said RMO No. 15-91 and RMC No. 43-91, Respondent issued against Petitioner, Assessment Notice No. 81-PT-13-94-97-9-118, demanding payment of the sum of P3,360,355.11 inclusive of interest and surcharge (Annex A, Petition for Review).

On October 3, 1997, Petitioner filed an administrative protest with the Office of the Revenue Regional Director, Revenue Region No. 7 of Cebu City, on the following grounds:

I. THERE IS NO SPECIFIC PROVISION IN EITHER THE TAX CODE OR THE VAT LAW WHICH EXPRESSLY IMPOSES ON PAWNSHOPS THE 5% TAX ON ITS GROSS INCOME.

II. PAWNSHOPS ARE WIDELY DIFFERENT FROM LENDING INVESTORS WHICH ARE SUBJECT TO THE 5% TAX ON GROSS INCOME UNDER THE SPECIFIC PROVISION OF THE TAX LAW.

III. REVENUE MEMORANDUM ORDER NO. 15-91 (RMO NO. 15-91) DATED MARCH 11, 1991 IS NOT IMPLEMENTING ANY PARTICULAR PROVISION OF THE INTERNAL REVENUE LAWS, BUT IS IN FACT A NEW AND ADDITIONAL TAX MEASURE ON PAWNSHOPS, WHICH ONLY CONGRESS MAY ENACT.

IV. RMO NO. 15-91 IS A TAXATION BY IMPLICATION THAT IMPLIEDLY AMENDS THE TAX LAW AND WHICH IS PROSCRIBED BY LAW.

V. RMO NO. 15-91 WHICH SINGLES OUT PAWNSHOPS AMONG OTHER LENDING AND FINANCIAL OPERATIONS PARTAKES OF A 'CLASS LEGISLATION".

As the said protest was not acted upon, Petitioner raised the issue to the Commissioner of Internal Revenue on March 16, 1998 (Annex C, Petition for Review).

On November 11, 1998, Petitioner filed the instant petition, citing as authority therefor, the last paragraph of Section 228 of R.A. 8424, otherwise known as the Tax Reform Act of 1997, which provides:

> "If the protest is denied in whole or in part, or is not acted upon within 180 days from the submission of documents, the taxpayer adversely affected by the decision or inaction , may appeal to the Court of Tax Appeals within 30 days from receipt of the said decision, or from the lapse of the 180-day period, otherwise the decision shall become final, executory and demandable".

Instead of filing an Answer, Respondent moved for the dismissal of the case on the following grounds:

1. This Court has no jurisdiction to act on the petition; and
2. The petition states no cause of action.

According to Respondent, under Section 7 of R.A. 1125, what is appealable to this Court is the decision of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessment. Since there is no decision yet on Petitioner's protest, the appeal is premature. Respondent further alleges in his motion to dismiss that Section 228 of the 1997 Tax Code is not applicable, the assessment in question having been issued on September 11, 1997 or before the effectivity of the said Code.

Through a Resolution promulgated on June 30, 1999, this Court assumed jurisdiction over the petition, in view of a Warrant of Distraint and Levy issued by Respondent on October 12, 1998 which appears to have been served to the Petitioner on December of the same year, allegedly showing that at the time Petitioner made its appeal before Us on November 11, 1998, a final decision has already been rendered by the Respondent. The Court likewise granted Petitioner's Motion for Issuance of a Writ of Preliminary Injunction, it being manifest that Respondent is threatening to enforce the payment of the disputed assessment through the aforesaid Warrant of Distraint and Levy, which act would render the instant petition nugatory.

On July 14, 1999, Respondent filed his Answer and claimed by way of Special and Affirmative Defenses that:

> "4. He repleads and incorporates by reference the foregoing allegations of this answer.
>
> 5. The petition does not state a cause of action as it does not allege that the assessment is invalid or incorrect. Since tax assessments are presumed correct and valid, the taxpayer has the burden of showing that the assessment is illegal or improper (CIR vs. Construction Resources of Asia, Inc., 145 SCRA 671).
>
> 6. Nevertheless, the assessment was issued in accordance with law and regulations."

The issues We are tasked to resolve are purely legal:

(1) Whether or not pawnshops are covered by the percentage tax imposed against Lending Investors under the Tax Code; and

(2) Whether or not RMO No. 15-91 and RMC No. 43-91, pursuant to which the assessment and collection of the five (5%) per cent

lending investors' tax on pawnshops are made, are valid and enforceable.

Petitioner contends that pawnshops are not lending investor since under the Tax Code, prior to its amendment by EO 273 (The VAT Law), pawnshops and lending investors were subjected to different tax treatments. While pawnshops are required to pay an annual fixed tax of P1,000.00, lending investors are subject to a 5% tax on their gross income, in addition to their fixed annual taxes. Furthermore, Petitioner maintains that pawnshops and their operations are regulated by the Central Bank pursuant to P.D. 114 (The Pawnshop Regulatory Act). On the other hand, there is no law governing lending investors. Petitioner likewise assails the validity of RMO No. 15-91 and RMC No. 43-91 because these are new and additional tax measures imposed by Respondent beyond the limits of his jurisdiction and that, these issuances have never been published in the Official Gazette or any newspaper of general circulation.

Respondent, on his part, insists that the legal definition of "lending investors" is broad enough to include pawnshop operators and that RMO No. 15-91 is a ruling expressly revoking previous rulings implementing Sections 116 and 157(u) of the Tax Code and therefore not a new tax measure.

We find for the Petitioner.

For purposes of clarity, the pertinent provisions of the laws involved are hereunder quoted:

Title V, Chapter I on Definitions of the Tax Code, as amended (1986)

Section 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.*

B. Title V, Chapter II on Tax on Business of the Tax Code, as amended (1986)

Section 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

(ff) Pawnshops*, one thousand pesos.*

x-x-x x-x-x x-x-x

Section 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. (As amended by PD 1739, PD 1959 and PD 1994) [formerly Section 116]*

C. Presidential Decree No. 114, otherwise known as the Pawnshop Regulation 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

(Emphasis and underscoring supplied)

At the outset, the argument of the Respondent that pawnshops are lending investors pursuant to the latter's definition under then Section 157(u) of the Tax Code, as amended, would seem to hold water in the light of the fact that a pawnshop is undeniably in the business of lending money at interest. This can be discerned readily from the provisions of the Pawnshop Regulation Act (P.D. 114) which under Sections 3 and 10 thereof, describes a pawnshop as "a person or entity engaged in the business of lending money" with none of it directly or indirectly stipulating, charging, demanding, taking or receiving "any higher rate or greater sum or value for any loan or forbearance than the rate allowed by the Usury Law for such transactions."

Relying on his authority under Sections 245 and 246 of the Tax Code, as amended, to make rulings or opinions in connection with the implementation of the provisions thereof and to revoke, modify or reverse the same, Respondent officially revoked BIR rulings exempting pawnshops from the 5% lending investors' tax by issuing the now disputed RMC 15-91and RMO 43-91.

After a careful scrutiny of the legal and factual milieu of the case at bar, We disagree with the viewpoint adopted by the Respondent. By clear legislative intent, pawnshops are not subject to the 5% lending investors' tax provided under Section 116 of the Tax Code, as amended.

In **CTA Case No. 5691 entitled Trustworthy Pawnshop, Inc. vs. Collector of Internal Revenue, promulgated last March 7, 2000,** We ruled that pawnshops and lending investors are two distinct tax subjects that are treated differently under the Tax Code. Congress would have no other reason to treat the two separately under paragraphs (dd) and (ff) of Section 161 of the Tax Code, as amended, except for the fact that they are dissimilar, hence subject to different tax treatments. The Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Hon. Andres B. Reyes, Jr., CA G.R. SP No. 28824 promulgated on December 23, 1993** categorically ruled that a pawnshop is not a lending investor.

With reference to the second issue, We rule in the negative. As correctly pointed out by Petitioner in its letter of protest (Exh. "F"), Revenue Memorandum Order No. 15-91 dated March 11, 1991, is not implementing any particular provision of internal revenue laws, but is in fact a new and additional tax measure on pawnshops which only Congress can enact. In fact, in the aforementioned case of **Commissioner of Internal Revenue vs. Hon. Andres B. Reyes, Jr., et. al., CA G.R. SP No. 28824**, (*supra*), the Court of Appeals ruled on the validity of the said RMO and RMC, thus:

> "x x x. Revenue Circulars 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 regulation to implement or carry into effect the provision of the Code in the enforcement of taxes provided 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 pawnshop, petitioner arrogated unto himself legislative powers, with grave abuse of discretion and in excess of jurisdiction."

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Revenue Memorandum Order No. 15-91 and Revenue Memorandum

Circular No. 43-91, in so far as they classify pawnshops as lending investors subject to the 5% lending investors' tax under Section 116 of the Tax Code, as amended, are hereby declared **NULL AND VOID**. **ACCORDINGLY**, Assessment Notice No. 81-PT-13-94-97-9-118, dated September 11, 1997 is hereby declared **CANCELLED, WITHDRAWN and WITH NO FORCE AND EFFECT**.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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