REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAMBUNTING PAWNSHOPS, INC.,
Petitioner,

- versus -

CTA Case No. 5991

THE COMMISSIONER OF INTERNAL REVENUE, THE REGIONAL DIRECTOR, Revenue Region No. 6, POTENCIANO E. PINEDA,
Respondents.

Promulgated:

JAN 0 3 2002

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DECISION

Assailed in this Petition for Review is the decision of the Respondent Regional Director Potenciano E Pineda, affirming the denial of Petitioner's formal protest on the assessment of the alleged 5% percentage tax and the deficiency income tax, in the amounts of P 1,405,852.25 and P 66,002.30, respectively.

Herein Petitioner is a corporation duly organized and existing under the laws of the Philippines, and duly licensed under pertinent laws as a pawnshop operator.

On March 11, 1991, the Bureau of Internal Revenue issued Revenue Memorandum Order (RMO) No. 15-91 subjecting all pawnshops to a five (5%) percent lending investor's tax citing as its basis Section 116 of the then prevailing National Internal Revenue Code which provides, thus:

> "**Section 116. Percentage Tax on Dealers in Securities; Lending Investors.** – Dealers in securities shall pay a tax equivalent to 6% of their gross income. Lending investors shall pay a tax equivalent to 5% of their gross income."

On April 15, 1996, the BIR issued against Petitioner, Assessment Notice No. 23-14-000573-92 (together with demand letters) covering percentage taxes in the total amount of P 1,405,852.25 (Annex D and E of the Petition for Review, CTA docket pp. 17 & 19) and deficiency income tax in the total amount of P 66,902.03 (Exhibit A), details of which are hereunder provided as follows:

I. Percentage Tax Assessment

Taxable Sales/Receipt	P 13,147,658.24
5% Tax due thereon	657,382.91
Less: Allowable Tax credits	-
Deficiency Tax Due	657,382.91
Add: 25% Surcharge	164,345.73
20% Interest per annum	534,123.61
Compromise Penalty	50,000.00
TOTAL	P 1,405,825.25

II. Deficiency Income Tax

Income Disclosed by the returns	
As audited	P 213,221.71
Add: Discrepancies	
Donation – excessive	62,724.52
Total Adjustments	62,724.52
Net income per investigation	275,946.28
Less: Personal & addt'l. exemption	-
Amount Subject to Tax	275,946.28
Income Tax Due thereon	96,581.23
Less: Amount already Assessed	66,130.14
Balance	30,451.09
Add: 25% Surcharge	7,612.77
20% Interest per annum	22,838.26
Compromise Penalty	6,000.00
TOTAL	P 66,902.03

The aforesaid percentage tax assessment was issued by Respondent on the basis of Revenue Memorandum Order No. 15-91 and Revenue Memorandum Circular No. 43-91 which imposes upon pawnshop operators a 5% lending investor's tax. On the other hand, the deficiency income tax arose from Respondent's disallowance of the full deductibility of Petitioner's donation made to lahar victims as it failed to submit the Certificate of Donation and/or Notice of Donation required by Batas Pambansa Bilang 45 and BIR-NEDA Regulation No. 1-81.

Thus, on May 7, 1996, Petitioner filed a formal protest (Exhibit E) with the BIR, through the Chief of the Assessment Division of Revenue Region No.8, contesting the validity of the aforesaid assessment.

On February 24, 1999, the BIR, through the Chief of the Assessment Division of Revenue Region No.6, Brenda B. Salazar, issued an opinion denying Petitioner's protest (Annex G of the Petition for Review, CTA docket p.21) which in part reads as follows:

> "In reply to your protest letter dated May 3, 1996, this Office would like to inform you that a legal opinion was rendered (attached copy) thru Mario A. Saldevar, Chief, Legal Division, in the memorandum/indorsement dated October 20, 1998 that since pawnshop business is akin to financial intermediaries not performing quasi-banking functions which is lending money at interest, Section 122 of the NIRC shall apply. You are subject to 5% percentage tax based on your gross receipts."

On March 19, 1999, Petitioner sought reconsideration of the said decision and sent a letter (Annex H of the Petition for Review, CTA docket pp.23-24) to the Commissioner of Internal Revenue reiterating that they are exempt from the payment of percentage tax in the light of the pronouncement of the Court of Appeals in the case of ***Commissioner of Internal Revenue vs. Hon. Andres Reyes, Jr., and Josefina Leal, CA-G.R. SP NO. 28024, December 23, 1993,*** which upheld the authority of the Regional Trial Court to issue a writ of Preliminary Injunction, ordering the Commissioner of

144

Internal Revenue to cease and desist from the implementation of Revenue Memorandum Order No.15-91 which imposes a 5% percentage tax on pawnshop operators.

On November 19, 1999, the Respondent, through the Regional Director of Revenue Region No. 6, Potenciano E. Pineda, denied Petitioner's motion for reconsideration, stating in part, thus:

> "In reply to your protest letter which we received on March 19, 1999, this office would like to inform you that we are reiterating your assessment based on RMC 47-92 dated October 15, 1992. Under this Revenue memorandum, it was stated that the case of Josefina Leal vs. CIR, which was filed with the Regional Trial Court, San Mateo Rizal, was filed by the Petitioner in her individual capacity and not as a class suit. Thus, the decision of the Court to cease and desist from implementation of RMO 19-91 is only in favor of Josephine Leal."

On January 6, 2000, Petitioner filed a Petition for Review with this Court and anchored its arguments on the following grounds:

1. The imposition by the Bureau of Internal Revenue of 5% percentage tax on the appellant has no legal basis;

2. The BIR is enjoined from implementing RMO No. 15-91 in the Prohibition case;

3. Granting that the Appellee may correctly impose the 5% percentage tax on Appellant, the Appellee's assessment lacks factual basis;

4. The assessment of deficiency income taxes lacks factual basis.

Respondent, in his answer filed on February 7, 2000, raised the following Special and Affirmative Defenses, thus:

1. The assessment is valid and correct and the taxpayer has the burden to (sic) of proof to impugn its validity. (*Behn Meyer & Co. vs Collector of Internal Revenue. 27 Phil 647*). Thus, similarly held, tax assessments by tax examiners are presumed correct and made in good

faith. The taxpayer has the duty to prove otherwise (*Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671*); and an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed (*Gutierrez vs. Villegas, 8 SCRA 527*).

2. 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 that the taxpayer is right (*Tan Guan vs. Court of Tax Appeals, et. Al., 19 SCRA 903[1967*]; otherwise, the presumption in favor of the correctness of the tax assessment stands. (*Inter Provincial Bus Co., Inc. vs. Collector of Internal Revenue, 98 Phil 290[1956]; Collector of Internal Revenue vs. Bohol Land Transportation, Co., 107 Phil 967[1960*].

3. Prior to the amendment of the National Internal Revenue Code by E.O. No. 273 which took effect on January 1, 1988, pawnshops and lending investors had a different tax treatment, such that lending investors and pawnshops were subject to different fixed taxes. After said amendment, fixed taxes on business were already deleted and that pawnshops and lending investors were subjected to the 5% lending investor's tax on their gross income pursuant to Revenue Memorandum Order No. 15-91 dated March 11, 1991.

4. The principal activity of pawnshops is lendi ıg money at interest and incidentally accepting "pawn" of personal property delivered by the pawner to the pawnee as security for the loan. Thus, this makes pawnshop business akin to lending investor's activity which is broad enough to encompass the business of lending money at interest by any person whether natural or judicial. 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.

5. The inclusion of pawnshops in the coverage of lending investor has not amended any provision of the Tax Code. It merely applied the definition to the reality that pawnshops are indeed engaged in the business of lending money at interest. Petitioner's contention that the essence of pawnshop operation is the "pawn" is only one way of looking at their two-sided operations. The other way of looking at it is that since they lend money at interest and requires a pledge of personal property as security (an accessory contract), the essence of their operation is lending money.

146

6. RMO No. 15-91, being issued in accordance with law, has the force and effect of law. There is no doubt that respondent issued RMO No. 15-91 in order to interpret a pre-existing law, particularly Section 116 of the Tax Code, as amended.

7. Under Section 219 of the 1986 Tax Code, as amended, no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by this Code. Clearly, the aforesaid provision of the Tax Code withholds all courts except the Court of Tax Appeals (under Section 11, R.A. No. 1125), the authority to restrain collection of any national internal revenue tax, fee, or charge thereby indicating the legislative policy to allow the Commissioner much latitude in the speedy and prompt collection of taxes (*Republic vs. Lim Tian Teng Sons & Co., Inc., March 31, 1966; Blaquera vs. Rodriguez, G.R. No. L-11295, March 29, 1958*). This is so because taxes, being the chief sources of revenue for the government to keep it running, must be paid immediately and without delay (*Commissioner of Internal Revenue vs. Yuseco, L-12518, October 28, 1961*).

From the foregoing arguments and disquisitions of the Parties, this Court is now tasked to resolve the following issues:

I.

WHETHER OR NOT THE ASSESSMENT OF THE ALLEGED FIVE PERCENT (5%) PERCENTAGE TAX AGAINST THE PETITIONER HAS LEGAL BASIS.

II.

WHETHER OR NOT THE ASSESSMENT OF THE ALLEGED DEFICIENCY INCOME TAX AGAINST THE PETITIONER HAS FACTUAL BASIS.

There is nothing novel in the first issue. In fact, this Court, in several cases has already disposed of similar issues and made a pronouncement removing pawnshop operators within the ambit of the 5% percentage tax. But before proceeding to the gist of

147

our discussion, it is wise for purposes of clarity and easy comprehension, to quote hereunder the pertinent provisions of law applicable to the instant case, thus:

A. 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)*

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

148

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, *supra*, would seem to hold water in the light of the fact that a pawnshop is undeniably in the habit 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, *supra*, 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.

149

Be that as it may, We do not subscribe to the point of view adopted by the Respondent. By clear legislative intent, We find pawnshops 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. Commissioner of Internal Revenue, promulgated on March 07, 2000**, We passed upon an identical legal issue in this manner:

> "We are in a situation where to adopt the literal import of the provisions of Section 157(u) in relation to Section 116 of the Tax Code, as amended, would lead to plain absurdity, injustice, contradiction and impairment of Constitutional limitations. For this reason, We are interpreting said provisions according to the principle of *ratio legis* or spirit or reason of the law.
>
> x x x x x x
>
> 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, 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 rate of tax. This particular observation bolsters 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 subjects 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

150

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.

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Again, if We go by definition and the rule on uniformity, banks, non-bank financial intermediaries and finance companies are supposed to be simply imposed a tax rate of 5% on their gross income because they do meet the criteria of what a lending investor should be. The fact shows, however, that they are treated differently.

Moreover, both Sections 119 and 120 of the Tax Code, as amended, carry a proviso granting the Commissioner of BIR the right to impose the same taxes on persons performing similar banking or financing activities, as the case may be, while Section 116 of the same Code governing lending investors has none of the same. If the legislature intended to include other persons or entities engaged in similar lending activities, such as pawnshops, under the term "lending investors", it would have conveniently added the same proviso. In the absence of such proviso, it would seem thus that lending investors are persons or entities of their own class, without any need for the Commissioner to classify other persons or entities engaged in similar lending activities.

What We have presented so far in the preceding discussion succinctly demonstrates the erroneous decision reached by Respondent Commissioner in classifying pawnshops as lending investors subject to the 5% lending investors' tax. Inevitably, We reach the conclusion that the term "lending investor" as defined in Section 157(u) should be taken in isolation and should serve no other purpose than to simply clarify what a "lending investor" is all about. Indeed, as pointed out by the Petitioner, there is no special law governing lending investors (p.8, Petition for Review). Without any legal or dictionary meaning of what a lending investor is, this lexicological vacuum could have very well been the sole justification for the existence of said definition."

A similar issue was likewise disposed of in the foregoing manner in **CTA Case No. 6154 (August 16, 2001)** entitled **Cebu Rosver Pawnshop, Inc. vs. Commissioner of Internal Revenue.**

Accordingly, we hold that it is error for the Respondent to impose a 5% percentage tax on pawnshops, such as herein Petitioner, especially so that the law is silent on the matter. We cannot stretch the term "lending investor" to cover pawnshops as this would in effect be a usurpation of the prerogative, power and authority of Congress.

Thus, We adopt the findings of the Court of Appeals, in the **case of Commissioner of Internal Revenue vs. Hon. Andres Reyes, C.A.-GR Sp. No. 28824,** which impugn the validity of the revenue regulations cited by the Respondent, 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 provisions 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 pawnshops, petitioner arrogated unto himself legislative powers, with grave abuse of discretion and in excess of jurisdiction."

With reference to the second issue, We rule to grant the assessment. As pointed out by the Respondent, Petitioner failed to substantiate by pertinent documents the alleged contributions it made to the lahar victims. True enough, it is imperative for the Petitioner to observe the substantiation requirements mentioned under Sections 6 and 7 of BIR-NEDA Regulations No. 1-81, as amended, which requires the submission of a Certificate of Donation issued by the donee institution and/or Notice of Donation executed by the donor, so as to avail itself of the 100% full deduction of the donation it made during taxable year 1992, thus:

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> **Section 6**. *Certificate of Donations.* - all qualified donee institutions are required to issue a certificate of donation in such form as prescribed by the BIR, on every donation or gift they receive. Such certificate shall be accomplished by donee in three or four copies and distributed within 30 days after the receipt of the donation.
>
> x x x x x x
>
> **Section 7**. *Notice of donations.* - Donors should give a notice for every donation worth over P1,000 to the Commissioner of Internal Revenue within 30 days after receipt of the Certificate of Donation attaching thereto copy of the Certificate of Donation issued to him by the qualified donee institution.

Furthermore, Section 11 of the same regulation likewise provides, thus:

> "**Section 11**. *Verification procedure and substantiation requirements.*
>
> A. For donors. - Donors claiming deduction from their taxable income for donations authorized by Batas Pambansa Blg. 45 should submit evidence to the BIR showing submission of the Certificate of Donation and/or Notice of Donation.
>
> (a) Actual receipt by the donee of the donation and the date of receipt thereof; and
> (b) The amount of the donation, if in cash; x x x

A perusal of the records would reveal that Petitioner, in its attempt to prove the donations made, only submitted 2 vouchers (Exhibits C and D) showing the amount of the Cash donation made (P60,000.00) as well as the amount of reimbursable expense incurred (P 2,724.52). However, We find them insufficient. Vouchers are merely documents prepared by Petitioner and thus, it does not attest to the veracity and truthfulness of the donations made nor to the qualification of the donee institution.

Thus, for failure of the Petitioner to comply with any of the abovementioned requirements, we rule to uphold the validity of the deficiency income tax assessment made by herein Respondent against the Petitioner. As deductions for income tax purposes

153

partake of the nature of tax exemptions; it should be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. We then find Petitioner to be liable to pay the deficiency income tax in the total amount of P60,902.07, computed as follows:

Net Income (per return/upon investigation)	P 213,221.71
Add: Disallowance	
*Donation	62,724.52
Net Income after Investigation	275,946.23
Less: Personal and addt'l. exemption	-
Amount subject to Tax	275,946.23
Income Tax due thereon	96,581.18
Less: Amount already assessed	66,130.14
Balance	30,451.04
Add: 25% Surcharge	7,612.77
20% Interest (from 4/15/93 to 4/15/96)	22,838.26
TOTAL INCOME TAX PAYABLE	P 60,902.07

It is worthy to note that this Court cancelled the compromise penalty of P6,000.00 imposed by the Respondent for the 1992 deficiency income tax due to the absence of an agreement freely entered into between the Petitioner and Respondent.

(Industrial Inspection (Int'l) Inc. vs Liwayway Vinzons Chato in her Capacity as Commissioner of Internal Revenue, CTA Case No. 5152, May 19, 1997 citing Collector of Internal Revenue vs UST, GR.L-11274 & L-11280, November 28, 1958 and M.R. Arick vs. Commissioner, CTA Case 1679, May 30,1969).

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Revenue Memorandum Circular No. 43-91 and Revenue Memorandum Order No. 15-91, 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**.

154

ACCORDINGLY, Petitioner is hereby **ORDERED TO PAY** the deficiency income tax in the amount of P 60,902.07 plus 20% delinquency interest computed from May 15,1996 until it is fully paid pursuant to Section 249 (c)(3) of the 1989 Tax Code.

The Assessment Notice No. 23-14-000573-92, dated April 15, 1996 involving the assessed percentage tax is hereby declared **CANCELLED and WITHDRAWN.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

(with Concurring & Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this 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

REPUBLIC OF THE PHILIPPINES
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THE REGIONAL DIRECTOR, Revenue Region
No. 6, POTENCIANO E. PINEDA,
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Promulgated:

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CONCURRING AND DISSENTING OPINION

I concur, in part, in the majority opinion penned by my colleague Judge Ernesto D. Acosta insofar as it ordered the payment of the deficiency income tax in the total amount of P60,902.07 but am unable to agree with the view that a pawnshop operator cannot be considered a lending investor for percentage tax purposes under Section 116 of the old Tax Code.

It is my humble opinion that pawnshops are subject to the 5% lending investor's tax for the principal reason that the nature of the business of pawnshops is lending money at interest. Section 3 of P.D. 114 more popularly known as the "Pawnshop Regulatory Act" issued on January 29, 1973 defined pawnshop in this manner:

> "Pawnshop shall refer to a person or entity engaged in the business of lending money on pawned property delivered as security for loans and shall be synonymous, and may be used interchangeably with pawnbroker or pawnbrokerage."

In fact, the Court of Appeals in the case of **Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., CA-G.R. SP No. 59282 promulgated on March 23, 2000**, supports my position when it clearly ruled, thus:

> "In support of its thesis that the Tax Court erred in holding that pawnshops are not subject to the lending investor's tax, the petitioner adverts to then Section 116 of the Tax Code, which provides that:
>
> > "**SECTION 116**. 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."
>
> *vis-a- vis* then Section 157(u) of the Tax Code (before amendment by Executive Order No. 273) which defined "lending investors" in this manner:
>
> > "(u) Lending investors include all persons who make a practice of lending money for themselves or others at interest."
>
> Hence, the definition of the term "pawnshop" under Section 3 of Presidential Decree No. 114, (otherwise known as the "Pawnshop Regulation Act" issued by President R. E. Marcos on 29 January 1973), thusly - -
>
> > "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 pawnbrokergage."
>
> is broad enough to encompass lending investors. Reason: Its principal business activity is actually lending money at interest: its accepting of pawned personal property as security for the loan is merely incidental to its main business activity. So much, in fact, is embodied in Revenue Memorandum Order No. 15-91, dated March 11, 1991, to wit:
>
> > "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 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

157

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."

It will be recalled that in the implementation of then Section 116 and Section 157(u) of the Tax Code, the Bureau of Internal Revenue had issued several rulings relative to the coverage of the pawnshops under the lending investor's tax. The first of these rulings was an unnumbered BIR Ruling bearing the date 2 March 1968, wherein it was held that "lending investors," as contemplated under then Section 194(u) of the Tax Code, do not comprehend persons engaged in pawnshop business. This rule was reiterated in, amongst other, BIR Ruling No. 135-82, dated 22 April 1982; BIR Ruling No. 001, dated 3 January 1983; and BIR Ruling No. 06-90 dated 23 January 1990.

Complementary to the above, March 11, 1991, herein petitioner issued RMO No. 15-91. This RMO No. 15-91 stated that, according to BIR Ruling No. 06-90, as well as VAT Ruling Nos. 067-90, 022-90, and 226-90, pawnshops are not subject to any business tax, that is, the value added tax, the lending investor's tax, or the percentage tax imposed on non-banking financial intermediary for the reasons therein set forth, amongst which, is that-

"Pawnshops are not subject to the 5% lending investor's tax under 116 of the Tax Code because, citing BIR Ruling dated March 2, 1968 and 135-82 dated April 22, 1982, lending investors, as contemplated under then Section 194(u) of the Tax Code, do not include persons engaged in pawnshop business."

Later, however, on May 27, 1991, the petitioner issued RMC No. 43-91 clarifying, amongst other, RMO No. 15-91, in this tenor:

"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, pawnshops owners or operators shall become liable to the lending investor's 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

158

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, 198 is hereby revoked."

In other words, RMO No. 15-91 and RMC No. 43-91, both expressly revoked previous BIR rulings to the effect that pawnshops are not subject to the five percent lending investor's tax. More importantly, RMC No. 43-91 revoked BIR Ruling No. 325-88, dated July 13, 1988, which held that a pawnshop ticket is not subject to the documentary stamp tax. And, this revocation of prior or previous, rulings is allowed under Section 246 of the Tax Code, to wit:

"**SEC. 246**. *Non-retroactivity of rulings*. – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the receding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application xxx."

Undoubtedly, petitioner's later/subsequent stance finds support in *Hilado v. Collector of Internal Revenue, 100 Phil. 288*, which effectively held that the incumbent is not bound by the previous ruling or opinion of his predecessor, if he is satisfied that a different construction of the statute should be adopted.

With such course of action, we are in full accord. For, as the Supreme Court itself held in *Que v. Intermediate Appellate Court, 169 SCRA 137*, even judicial decisions are by no means immutable or infallible. Which is as it should be. For time works changes and brings into existence new conditions and purposes. And the law as an expression of social needs, whilst it is desirable that it should b e stable, yet it cannot and must not stand still.

It should ever be borne in mind that taxes are what we pay for civilized society: taxes, indeed, are the lifeblood of the nation. Not much unlike an army, which, to borrow the picturesque prose of Napoleon, marches on its stomach, the prosperity and economic well-being of the country rises or falls on the effectiveness – or lack of its – of the tax collection efforts of the Government. Which explains why, as a matter of policy, the law frowns

159

against exemptions in taxes. So much so that, statutes granting tax exemptions have been held to be *strictissimi juris* against taxpayer, and liberally in favor of the taxing authority, viz., the State, or its instrumentality or agencies. About the only exemption to this rule (that the tax exemption may be withdrawn at the pleasure of the taxing authority) is where the exemption was granted to private parties based on material considerations of a mutual nature, in which event it become contractual, and is thus protected by the non-impairment clause of the Constitution.

Indeed it is the constant teaching of unrelenting case law that rules for the allowance of tax creditors, as well as claims for tax exemptions, must be **expressly granted in a statute**, and couched or stated in language too plain to be misunderstood or mistaken. Here, respondent pawnshop cannot point to any specific provision in P.D. 114, from which it draws its breath of life, that explicitly exempts it from the coverage of RMO No. 15-91 and RMC No. 43-91.

In sum, since the respondent in the case at bench is a pawnshop operator, it must follow, as night follows day, in the elegant poetry of Shakespeare – that it is subject to the five percent lending investor's tax hence, liable for the amount of Pesos: One Hundred Six Thousand Five Hundred Thirty Eight and Fifty-nine Centavos (P106,538.59), by way of deficiency percentage tax for the year 1995."

In the cases of **Molo vs. Yatco, 71 Phil. 465 (1941),** and **Siao Tiao Hong vs. Commissioner of Internal Revenue, G.R. No. L-32075, September 1, 1992**, our Supreme Court ruled that a person, who lent money to several persons with interest, without proving that said loans were made accidentally or due to certain peculiar circumstances, was presumed to be a lending investor. In the **Siao Tiao Hong** case, the high tribunal ruled:

A lending investor is defined under Section 194(u) of the Internal Revenue Code as one "who makes a practice of lending money for themselves or others at interest.

x x x

However, We do not find credible petitioner's contention that the loans he extended to several individuals were isolated transactions to accommodate his friends. On this point, We agree with the Court of Tax Appeals when it observed:

160

> "Anent petitioner's allegation that the loans were made by him merely to accommodate friends without deriving profit therefrom, no other evidence was adduced by petitioner to corroborate said allegation except his own self-serving deposition. Moreover, petitioner's contention is belied by the fact that he collected interest from the borrowers and on several occasions required them to execute deeds to mortgages to guarantee payment of said loans. These interest income from loans and mortgage transactions are reflected in petitioner's income tax return."

The case at bar is similar to the case of *Molo vs. Yatco*, where it was held that a person who lent money to several persons with interest, without proving that said loans were made accidentally or due to certain peculiar circumstances, was presumed to be a lending investor within the meaning of the law.

Considering that a person, who lends money to several persons with interest, is already presumed to be a lending investor unless it is proven that said loans were made accidentally or due to certain peculiar circumstances, then obviously, a pawnshop whose principal activity is lending money to the public at interest under security of personal property or pledge should be deemed a lending investor.

In **Bancom Group Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2977, December 15, 1982**, this Court even had occasion to rule that a corporation which borrowed money from banks for the purpose of relending the same to its subsidiaries is considered a lending investor even if it incurred losses in the process.

There is nothing in the law that expressly exempts pawnshops from the percentage tax on lending investors. The term "Lending investors" is simply defined as including "all persons who make a practice of lending money for themselves or others at interest". Section 116 of the then Tax Code provides in pertinent part: "Lending investors shall pay a tax equivalent to five (5%) per cent of their gross income." There is no mention

161

therein that pawnshops shall be exempt from the tax on lending investors. In this regard, Presidential Decree No. 114, the "Pawnshop Regulation Act", has no provision specifically exempting pawnshops from the lending investors' tax.

Pawnshops are clearly lending investors since they lend money at interest to the general public. Since the law does not distinguish between them and other lending investors for purposes of the percentage tax on lending investors, they should be subject to such tax. In **Philippine British Assurance Co., Inc. vs. Intermediate Appellate Court, G.R. No. L-72005 May 29, 1997 , 150 SCRA 521**, our Supreme Court held:

> It is a well recognized rule that where the law does not distinguish, courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemus.* The rule, founded on logic, is a corollary of the principle that general words and phrases in a statute should ordinarily be accorded their natural and general significance. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law. In other words, there should be no distinction in the application of a statute where none is indicated. For courts are not authorized to distinguish where the law makes no distinction. They should instead administer the law not as they think it ought to be but as they find it and without regard to the consequences.
>
> A corollary of the principle is the rule that where the law does not make any exception, courts may not except something therefrom, unless there is compelling reason apparent in the law to justify it.

Petitioner contends that pawnshops are not subject to the lending investors' tax by virtue of legislative intent. However, this contention is not based on any clear statement in the law to this effect. Pertinent to this case is the cardinal rule in statutory construction is that tax exemptions are strictly construed against the taxpayer. In **Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, G.R. No. L-21841 October 28, 1966, 18 SCRA 489**, the Supreme Court, in deciding against therein taxpayer's argument for tax exemption, held:

162

> x x x But this contention runs smack against the familiar rules that exemption from taxation is not favored, and that exemptions in tax statutes are never presumed. Which are but statements in adherence to the ancient rule that exemptions from taxation are construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tested by this precept, we cannot indulge in expansive construction and write into the law an exemption not set forth. x x x

"Well-settled is the rule that exemption from taxation is never presumed. For tax exemption to be recognized, the grant must be clear and expressed; it cannot be made to rest on vague implications." **Insular Lumber Co. vs. Court of Tax Appeals, G.R. No. L-31057, May 29, 1981, 104 SCRA 711**, citing **Davao Light and Power Co., Inc. vs. Commissioner of Customs, 44 SCRA 129**, citing **Resins, Inc. vs. Auditor General, 25 SCRA 754, Asturias Sugar Central Inc. vs. Commissioner of Customs, 29 SCRA 617, Commissioner of Internal Revenue vs. Visayan Electric Co., 23 SCRA 715, Commissioner of Internal Revenue vs. Guerrero, 21 SCRA 180, Esso Standard Eastern Inc. vs. Acting Commissioner of Customs, 18 SCRA 488, Borja vs. Collector of Internal Revenue, 3 SCRA 590.** Petitioner has failed to show in clear and unequivocable terms that it is entitled to exemption from the percentage tax on lending investors.

In view thereof, I therefore vote to rule in favor of Respondent and order the Petitioner to pay the assessed deficiency percentage tax and income tax for the taxable year 1992.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

163