REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRIME ASIA PAWN and JEWELRY SHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6304

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 04 2002

x - x

DECISION

This Petition for Review sought the declaration of nullity of the assessment notice issued by the Commissioner of Internal Revenue on May 23, 2000 for alleged deficiency value-added tax (VAT) amounting to P2,082,173.64, inclusive of interest, penalties and surcharges.

Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines, with principal office at 154-156 Lim Chin Building, Colon Street, Cebu City. It is engaged in the pawnshop business.

On March 2, 2000, respondent through Regional Director Crispino B. Vallejo, Jr., Revenue Region No. 13, Cebu City, issued a Preliminary Assessment Notice with Details of Discrepancies for alleged deficiency VAT and withholding tax for the year 1997, in the amounts of P2,035,822.98 and P20,350.72, respectively. Respondent averred that beginning 1996, pawnshop operators became subject to VAT pursuant to Section 102 (a) of the Tax Code, as amended by Republic Act No. 7716, as further amended by R.A.

8241. Further, respondent based the assessment for deficiency VAT on a BIR Ruling dated September 1,1997 which ruled that pawnshop operators are subject to the 10% VAT (Exhibits A and A-1).

On March 29, 2000, petitioner filed its letter-protest assailing the Preliminary Assessment Notice issued by respondent on March 2, 2000, covering its 1997 deficiency VAT but agreed to settle the deficiency withholding tax for the same year (Exhibit "B").

On May 23, 2000, respondent denied petitioner's protest and reiterated its demand for payment of the latter's tax liabilities in the total amount of P2,114,596.33 (Exhibit "C"). On even date, respondent issued Assessment Notice No. 81-vat-13-97-2000-5-106 with Formal Letter of Demand with a total deficiency VAT of P2,082,173.64 (pp. 396 and 397, BIR Records).

On July 25, 2000, petitioner filed a second letter protest reiterating its claim that its pawnshop business is not subject to the 10% VAT and that the assessment for deficiency VAT for the year 1997 should be cancelled and set aside for lack of legal basis.

In a letter dated March 29, 2001, which was received by petitioner on April 25, 2001, respondent denied petitioner's request for the second time which constituted the former's final resolution on the issue involved in this case (Exhibit "E"). Petitioner then filed the instant Petition for Review on May 24, 2001, claiming that the assessment for its alleged non-payment of the 1997 value-added tax on its pawnshop business is arbitrary and illegal based on the following grounds:

> "A. Section 108 of the National Internal Revenue Code of 1997 does not mention pawnshop business as being liable for value added tax;

B. Congressional intent to exempt pawnshop business from the payment of the value added tax is clear from the provisions of Sections 105 through 115, Title IV of the National Internal Revenue Code of 1997;

C. Historically, pawnshop business has always been exempt from the payment of the value-added tax (percentage tax);

D. The assessment is not in accordance with law."

In his Answer filed on July 3, 2001, respondent claimed by way of Special and Affirmative Defenses that:

"8. 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 imposed under Section 102(a) of the Tax Code, as amended by R.A. 7716.

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

10. All presumptions are in favor of the correctness of tax assessments."

During the hearing held on August 17, 2001, which was likewise stated in the Court's Resolution promulgated on October 18, 2001, the parties have agreed that there is only one (1) legal issue involved, that is: "Whether or not petitioner's pawnshop business is liable for value-added tax."

Petitioner contended that it is not subject to the VAT under Section 108 of the National Internal Revenue Code of 1997, as the said section did not mention pawnshop business as being liable for VAT, thus, there was no legal basis for the 1997 deficiency VAT assessment.

It likewise advanced the view that the provisions of the NIRC on VAT reveal that the pawnshop business is not subject thereto, and that it was allegedly clear that Congress intended to exempt pawnshop business from the payment of VAT.

Furthermore, petitioner cited the case of **Trustworthy Pawnshop, Inc. vs. Collector of Internal Revenue CTA Case No. 5691 dated March 7, 2000,** wherein this Court declared Revenue Memorandum Circular Nos. 15-91 and 43-91 null and void, insofar as they classify pawnshops as lending investors, for being contrary to law and the constitution.

Respondent, on the other hand, posited the view that under Section 102 (a) of the NIRC, as amended, [now Section 108 (A) of the 1997 NIRC], 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. It includes the services enumerated therein and similar services regardless of whether or not the performance thereof calls for the exercise or use of physical or mental faculties. Further, the enumeration of persons performing services is not exclusive, but was intended to give examples of businesses subject to VAT on sale or exchange of services. Respondent went on to cite the case of **Gomez vs. Ventura (54 Phil 726)**.

> " xxx The maxim *expressio unius est exclusio alterius* should be applied only as a means of discovering legislative intent and should not permitted to defeat the plain indicated purpose of the legislature. It does not apply when words are mentioned by way of example, or to remove doubts. (See Cyc. 1122) x x x"

It further argued that Section 103 of the old Code (now 109 of the 1997 NIRC) enumerated the transactions which are exempt from VAT. The enumeration is exclusive and those which are not mentioned therein are not exempt from VAT. Thus, unless the sale or exchange of services is expressly mentioned in Section 103 of the NIRC (now Section 109 of the 1997 NIRC), then such sale or exchange of services is subject to VAT.

On May 4, 1994, RA No. 7716, otherwise known as The Expanded Value-Added Tax Law, was enacted, amending certain provisions of the NIRC. Under the said Act, any person, who in the course of trade or business, sells, barters or exchanges goods, properties, renders services and any person who imports goods shall be liable to the value-added tax imposed in Sections 100 and 102 of the said Code. On December 11, 1995 and December 9, 1995, Revenue Regulations Nos. 6-95 and 7-95, respectively, were issued to implement the provisions of R.A. No. 7716.

On January 1, 1997, R.A. No. 8241 took effect, further amending certain provisions of R.A. No. 7716. The said Act, while still subjecting to VAT all kinds of services rendered in the Philippines for a fee, remuneration or consideration, added some more transactions exempt from the VAT. The following day, January 2, 1997, Revenue Regulations No. 6-97 was issued to implement R.A. No. 8241.

On September 1, 1997, Assistant Commissioner Sixto S. Esquivias IV issued the questioned DA-297-97 dated September 1, 1997, subjecting pawnshop operators to the 10% value added tax pursuant to Section 102 (a) of the Tax Code, as amended by R.A. No. 7716, and further amended by R. A. No. 8241, beginning 1996.

On January 1, 1998, R.A. No. 8424, otherwise known as the Tax Reform Act of 1997, took effect which contained all the aforementioned amendments.

For clarity, we quote the pertinent provisions of Section 108 (A) of the 1997 NIRC, to wit:

> "**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 goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafe's 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." (Emphasis supplied).

On the other hand, Section 102 (a) of the old NIRC provides, viz:

> "(a) *Rate and Base of tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to 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 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;** operators of taxicabs; utility cars for rent or hire driven by the lessees (rent-a-car companies), tourist buses; and other common carriers by land, air and sea 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 117 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." (Emphasis supplied).

Based on the foregoing provisions, it is clear that the services of pawnshops are not mentioned in the enumeration of both Sections 108 (A) of the 1997 NIRC and 102 (a) of the old Code. However, respondent argued that the services of pawnshops are similar to those rendered by lending investors, which, if warranted, would indeed subject the services rendered by petitioner to value-added tax.

In the case of **Trustworthy Pawnshop, Inc. versus Collector of Internal Revenue, CTA Case No. 5691, promulgated on March 7, 2000,** the Court first passed upon the issue in this manner:

> "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, *supra*, 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 amount 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 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."

Our conclusion finds support in the case of **Commissioner of Internal Revenue vs. Hon. Andres B. Reyes, Jr., et. al., CA-G.R. Sp No. 28824 promulgated on December 23, 1993**, where the Court of Appeals categorically ruled that a pawnshop is not a lending investor, thus:

"xxx Contrary to petitioner's posture, a pawnshop is not a lending investor, and therefore it is not subject to percentage tax. Pawnshops and their operation are strictly regulated by the Central Bank, pursuant to P.D. 114. The charges and interest rates imposed by pawnshops are prescribed by the Central Bank to protect client's title. On the other hand, there is no law governing lending investors and the charges and interest they impose are flexible, not pegged by the Central Bank. In this case, petitioner, seeks to justify the Revenue Circulars in question on the ground that the business of lending money by the pawnshop is akin to lending investors who are subject to percentage tax, hence, the pawnshop should also be subjected to percentage tax. This is taxation by implication which is legally proscribed. **(Froechlich and Kuttner vs. Collector of Customs, 18 Phil. 461)**."

Finding petitioner not subject to VAT, we, therefore find DA-297-97 or the alleged unnumbered Revenue Memorandum dated September 1, 1997, issued by OIC Assistant Commissioner Sixto Esquivias IV, as invalid and unenforceable.

DA-297-97, which to us, is more of a ruling rather than a memorandum as the same embodies opinions on queries from the Regional Director, does not have the force and effect of law. Although courts may uphold administrative rulings, the same, however, must be in harmony with the provisions of the law. They cannot impose additional taxes.

As held in the aforementioned case of **Commissioner of Internal Revenue vs. Hon. Andres Reyes, Jr., et al.**:

> "xxx 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 provision of the Code in the enforcement of taxes 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."

Further, respondent raised two questions in his Memorandum filed on December 19, 2001, to wit:

1. Are pawnshops engaged in the sale of services?

2. Assuming that pawnshops are engaged in the sale of services, are such services covered by the phrase "all kinds of services" mentioned in Section 102 (a) [now 108 (A) of the Tax Code]?

Contrary to respondent's assertions, the foregoing questions have already been addressed by this Court in the aforequoted cases.

It is a well settled rule in taxation that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the provisions of a taxing act are not to be extended by implication. **(Marinduque Iron Mines Agents, Inc. vs. Mun. of Hinabangan, L-18924, June 30, 1964)** [cited in p. 93, Law of Basic Taxation in the Philippines, Aban, First Edition).

Furthermore in every case of doubt, tax statutes are construed most strongly against the Government and in favor of the citizen because burdens are not to be imposed beyond what the statutes expressly and clearly import. **(Collector vs. La Tondeña, Inc. L-10431, July 31, 1962; See also Commissioner vs. Fireman's Fund Insurance Co., L-30644, March 9, 1987)** [cited in p. 93, Law of Basic Taxation in the Philippines, Aban, First Edition).

Therefore, in the absence of a provision in the VAT law which clearly imposes VAT upon pawnshop business, then said business is not subject to VAT.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **GRANTED**. Assessment Notice No. 81-vat-13-97-2000-5-106 dated May 23, 2000, is hereby **CANCELLED, WITHDRAWN and WITH NO FORCE AND EFFECT.**

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(With Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRIME ASIA PAWN and JEWELRY SHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6304

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 04 2002 [signature]

x - x

DISSENTING OPINION

I disagree with the cancellation of the deficiency VAT assessment issued against Petitioner on the ground that pawnshops are subject to VAT for the following reasons:

1. Then Section 102(a) [now renumbered as Section 108(A)] of the Tax Code subjects to VAT the sale of all kinds of services in the Philippines for a fee, remuneration or consideration, including lending investors, services of banks, non-bank financial intermediaries and finance companies, and similar services. [Note: In the case of banks, non-bank financial intermediaries and finance companies, VAT imposition has been deferred to January 1, 2003 under Section 5 of RA 8424, as amended by RA 8761 and RA 9010.] Section 102(A) provides in pertinent part:

> "**SEC. 102**. *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 or property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension house, 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 except those under Section 119 of this Code: services of banks, non-life insurance companies (except their crop insurances), including surety, fidelity,. indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. x x x

x x x

The term ***'gross receipts'*** means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding the value-added tax." [Underscoring ours]

From the foregoing, the sale or exchange of services is subject to VAT. The phrase "sale or exchange of services" encompasses the performance of all kinds or services for a fee, remuneration or consideration.

The enumeration of persons performing services for a fee, such as, construction and service contractors, stock, real estate, commercial, customs and immigration brokers, etc., is merely intended to give examples of businesses performing services for a fee that are subject to VAT. The enumeration is not exclusive, which means that other persons performing services for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT. As held in **Gomez vs. Ventura, (54 Phil. 726)**:

> "x x x 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 words are mentioned by way of example, or to remove doubts. (See Cyc., 1122) x x x." [Underscoring ours]

Section 102(A) [now 108(A)] 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." 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.
>
> 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. 24, p. 82, Sec. 47.08, citing United States. Argosy Ltd. v. Hannigan, 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 Ct 1 (1941). [Underscoring ours]

Hence, the terms "includes" and "including" does not exclude items otherwise within the scope of the defined term.

> "Includes" and "Including"
>
> 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 on 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).

Hence, in the cases of **Genato Commercial Corporation vs. The Court of Tax Appeals, 104 Phil. 615**, and **Philippine American Drug Co. vs. Collector of Internal Revenue, 106 Phil. 163**, general words were harmonized with specific words found in the statute in question so as not to limit coverage of the taxing statute. In determining that the bank charge in question formed part of the charges enumerated in Art. 183-(B) of the then Tax Code, the Supreme Court in the Genato case (cited in the *Philippine American Drug Co.* case) held:

> As may be seen, an importer is required to pay in advance the necessary percentage tax on the articles imported "based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, <u>including freight, postage, insurance, commission, customs duty, and all similar charges</u>." In other words, the law requires that it be included in the assessment not only the import invoice value of the merchandise, which includes freight, postage, insurance, commission and customs duty, but all

> other similar charges which would necessarily increase the landed cost of the merchandise imported, which, in our opinion, should include the difference of Php 0.015 paid by petitioner to a local bank in the purchase of foreign exchange to carry out the importation. Indeed, the intention of Congress in enacting the above-quoted provision is to include in the assessment all charges, whether specified or otherwise, which an importer has to pay to complete his importation.
>
> Invoking the rule of ejusdem generis which provides that "where, in a statute, general words follow a designation of a particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, class or nature as those specifically enumerated," petitioner contends that the difference of Php 0.015 which it paid to a local bank in the purchase of foreign exchange to cover the importations in question cannot be included in the assessment for the purpose of determining the advance sales tax because they are not similar to the charges specifically enumerated in the law.
>
> With this we disagree, for it cannot be denied that the intention of the law is to include all charges, that may be paid by the importer to bring the importation into the country. In other words, all items of expense that may be incurred by the importer in bringing the importation into the country and which would necessarily increase the landed cost must be deemed included in the phrase "all similar charges" mentioned in the law. The doctrine of ejusdem generis is but a rule of construction adopted as an aid to ascertain and give effect to legislative intent when that intent is uncertain or ambiguous, but the same should not be given such wide application that would operate to defeat the purpose of the law. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (*State vs. Prather, 21 L.R.A. 23,25*). [Underscoring ours]

In this particular case, the law is not only clear in its intent but also in its wording that "all kinds of services" should be subject to VAT. Hence, pawnshop services should a *fortiori* be subject to VAT.

2. Since pawnshops are engaged in the sale of services, they are subject to VAT under Section 108 of the Tax Code.

Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulation Act" 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 and shall be synonymous, and may be used interchangeably with, pawnbroker or pawnbrokerage."

Judicial notice may be taken of the fact that the principal activity of pawnshops is lending money at interest on the security of personal property. The act of lending money at interest constitutes the performance of a service for a fee, remuneration or consideration for such service. Hence, pawnshops are engaged in the sale of services subject to VAT under Section 108 of the Tax Code.

3. Moreover, the term "lending investor" as well as "similar services" in Section 108 of the Tax Code sufficiently encompasses pawnshop activities. Section 116 of the Tax Code (before amendment by Executive Order No. 273) defined "lending investor" in this manner:

> "(u) Lending investors include all persons who make a practice of lending money for themselves or others at interest."

The definition of the term "pawnshop" under Section 3 of P.D. No. 114 is broad enough to fall within the coverage of "lending investors" and "similar services" even if one were to restrict the meaning of "all kinds of services" under Section 108 of the Tax Code. After all, the principal business activity of pawnshops is actually lending money at interest.

In the case of **Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., CA -G.R. SP. No. 59282, March 23, 2001**, the Court of Appeals ruled that pawnshops are subject to the then five percent (5%) lending investors' tax since they are considered to be lending investors. In determining that pawnshops are lending investors, the Court of Appeals reasoned as follows:

> "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 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-

> "Pawnshop 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 Sєction246 of the Tax Code, pawnshops owners or operators shall becme 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 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. 15091 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 be 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 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."

4. As previously cited, then Section 102(A) [now Section 108(A)] of the Tax Code provides: "The term ***'gross receipts'*** means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding the value-added tax."

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. In this regard, the BIR subjected to VAT the "gain on auction sale," *not* the proceeds thereof. [Please see "Details of Discrepancy" attached to BIR Formal Letter of Demand, Annex A2/3, Petition for Review]

5. Section 103 [now Section 109] of the Tax Code, as amended by RA 7716, enumerates the transactions that are exempt from VAT. Pawnshop transactions are not among the exempt transactions. Neither are there any express provisions of law exempting pawnshops from VAT. Since the transactions of pawnshops are not among those enumerated in Section 103 [now 109] of the Tax Code or any other express provision of law as VAT exempt, the same are subject to VAT under Section 102(A). In this regard, tax exemptions are strictly construed against the taxpayer. In the absence of any clear provision of law exempting pawnshops from VAT, our conclusion is that pawnshops are subject to VAT on their gross receipts since they are clearly engaged in the performance of services.

In the recent case of **Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, promulgated on March 30, 2001**, the Supreme Court ruled that the taxpayer, not falling within the exemptions mentioned under Section 109 [formerly 103] of the Tax Code, is subject to VAT. The high tribunal held:

Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." x x x

x x x

Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. <u>As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.</u>

At any rate, it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, <u>any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom. In the case of VAT, Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT.</u> *Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, March 30, 2001.* [Underscoring ours]

WHEREFORE, I register my dissent to the majority opinion and vote to uphold the assessment for deficiency value-added tax in the amount of P2,079,173.64 inclusive of 25% surcharge and 20% deficiency interest plus 20% delinquency deficiency interest from June 24, 2000 until fully paid pursuant to Sections 248 and 249 (B) of the Tax Code.

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