REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CAPITAL EQUITY PAWNSHOP CO., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7033

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
FEB 06 2008; 10:10AM

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DECISION

CASANOVA, *J.*:

Before the Court is a Petition for Review praying that the Assessment Notices, all dated January 23, 2004, for deficiency income, value-added, expanded withholding and documentary stamp taxes for taxable year 2000 against petitioner be cancelled and set aside.

THE FACTS

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal business address at the 8th Floor Builder's Center Building, 170 Salcedo Street, Legaspi Village, Makati City.[1]

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[1] Paragraph 1.a of the Joint Stipulation of Facts; docket, p. 67.

210

Respondent is the public official charged with the enforcement and administration of the internal revenue laws of the Philippines. He holds office at the Bureau of Internal Revenue Building, Diliman, Quezon City.[2]

Petitioner is a duly organized domestic corporation engaged in the pawnshop business.[3]

On January 23, 2004, respondent, through then Acting Regional Director Anselmo G. Adriano, of Revenue Region 8, Makati, issued a Formal Assessment Notice against Petitioner for deficiency income tax (IT) in the amount of Php131,229.26; value-added tax (VAT) in the amount of Php567,502.62; expanded withholding tax (EWT) in the amount of Php5,005.81; and documentary stamp tax (DST) in the amount of Php78,569.83 for taxable year 2000, computed as follows:[4]

INCOME TAX		P (121,694.48)
Net Loss per Return		
Add: Disallowed Expense for Non-Withholding:		
Portion of Rental Expense (Schedule 1)		61,936.52
Disallowed Expense (50% Rule)		
Office Supplies	P24,298.00	
Travel and Transportation	1,137.50	
Representation & Entertainment	550.00	
Power, Light, & Water	69,960.08	
Postage Telephone and Cable	32,065.48	
Repair and Maintenance	31,196.12	
Taxes and Licenses	16,001.26	
Donation	3,725.00	
Miscellaneous Expense	19,902.50	198,835.94
Taxable Income		P139,077.98
Add: NOLCO		121,694.48
Adjusted Taxable Income		P260,772.46
Tax Due		P83,447.18
Add: Interest (4.16.01 to 2.24.04)		47,782.08
Amount still due		P131,229.26

[2] Paragraph 1.b of the Joint Stipulation of Facts; *ibid.*, pp. 67-68.
[3] Paragraph 1.c of the Joint Stipulation of Facts; *ibid.*, p. 68.
[4] Paragraph 1.d of the Joint Stipulation of Facts; *ibid.*

350

VALUE ADDED TAX

Gross Taxable Sales	P 2,681,404.00
Output Tax	268,140.40
Less: Input Tax	-
VAT Due	268,140.40
Add: Surcharge (50%)	134,070.20
Interest (1.26.02 to 2.24.04)	165,292.02
Amount still due	P567,502.62

EXPANDED WITHHOLDING TAX

Portion of Rental Expense with no Withholding Tax	P 61,936.52
Tax due thereon	3,096.82
Add: Interest (1.26.02 to 2.24.04)	1,908.99
Amount still due	P5,005.81

DOCUMENTARY STAMP TAX

Pledge Loans	P18,482,750.00
Tax Due	P 36,980.00
Add: Surcharge (1.11.01 to 02.24.04)	18,490.00
Interest (1.11.01 to 02.24.04)	23,099.83
Amount still due	P 78,569.83

On February 2, 2004, petitioner filed its written protest of the Formal Assessment Notice dated 23 January 2004.[5]

On July 14, 2004, the respondent denied the protest of the assessment for deficiency IT, VAT, EWT and DST.[6]

On August 11, 2004, within the prescriptive period, petitioner filed the present petition.[7]

THE ISSUES

Both parties agreed on the following issues for this Court's resolution:

> "a. Whether petitioner failed to support their claimed expenses in the total amount of Php198,835.94 with the necessary documents as required by Section 34(A)(1)(b) of the 1997 Tax Code.
>
> b. Whether petitioner failed to withhold the tax due on portion of its rental expense in the amount of Php61,936.52 in violation

[5] Paragraph 1.e of the Joint Stipulation of Facts; *ibid.*
[6] Paragraph 1.f of the Joint Stipulation of Facts; *ibid.*
[7] Paragraph 1.g of the Joint Stipulation of Facts; *ibid.*, pp. 68-69.

of Section 34(k) of the 1997 Tax Code as implemented by Revenue Regulations No. 2-98.

c. Whether petitioner's net operating loss in the amount of Php121,649.48 was already carried over to the succeeding periods as provided in Section 34(D)(3) of the 1997 Tax Code.

d. Whether pawnshops are subject to VAT under Section 108 of the 1997 Tax Code.

e. Whether petitioner is liable for DST on the total amount of its pledge loans as imposed under Section 195 of the 1997 Tax Code.

f. Whether for taxable year 2000, petitioner incurred the following tax liabilities: (a) deficiency income tax covered by Assessment Notice No. IT-53463-00-04-654 dated 23 January 2004 in the amount of Php131,229.26; (b) deficiency VAT covered by Assessment Notice No. VT-53463-00-04-564 dated 23 January 2004 in the amount of Php567,502.62; (c) deficiency expanded withholding tax covered by Assessment Notice No. WE-53643-00-04-564 dated 23 January 2004 in the amount of Php5,005.81; and (d) deficiency DST covered by Assessment Notice No. DS-53643-00-04-564 dated 23 January 2004 in the amount of Php78,569.83."[8]

Trial proceeded. Thereafter, the case was deemed submitted for decision after the Court received petitioner's Memorandum on July 26, 2007.[9]

THIS COURT'S RULING

AS REGARDS DEFICIENCY INCOME TAX

Respondent computed the deficiency income tax assessment of P131,229.26 as follows:

Net Loss per Return	₱(121,694.48)
Add: Disallowed Expense for Non-Withholding Portion of Rental Expense (Schedule 1)	**61,936.52**
Disallowed Expense (50% Rule)	

[8] Joint Stipulation of Issues; *ibid.*, pp. 69-70.
[9] See Resolution dated September 24, 2007; *ibid.*, p. 347.

Office Supplies	P24,298.00	
Travel and Transportation	1,137.50	
Representation & Entertainment	550.00	
Power, Light & Water	69,960.08	
Postage Telephone and Cable	32,065.48	
Repair and Maintenance	31,196.12	
Taxes and Licenses	16,001.26	
Donation	3,725.00	
Miscellaneous Expense	19,902.50	**198,835.94**
Taxable Income		₱ 139,077.98
Add: NOLCO		**121,694.48**
Adjusted Taxable Income		₱ 260,772.46
Tax Due		₱ 83,447.18
Add: Interest (4.16.01 to 2.24.04)		47,782.08
Amount still due		₱ 131,229.26

In arriving at the deficiency income tax of ₱131,229.26, respondent denied petitioner's claimed deductions as follows: (a) portion of rental expense in the amount of ₱61,936.52; and (b) other expenses in the amount of ₱198,835.94. Likewise, respondent added back petitioner's declared net loss amount of ₱121,694.48 in computing the latter's taxable income.

A. Portion Of Rental Expense In The Amount Of P61,936.52

Invoking Section 34(K) of the National Internal Revenue Code of 1997 (Tax Code), as amended, respondent disallowed petitioner's claimed rental expense deduction in the amount of ₱61,936.52 due to the alleged non-withholding of the appropriate withholding tax. Below is the respondent's computation of the amount of ₱61,936.52:[10]

Total Rent Expense	₱1,085,443.92
Less: Portion of Rent Expense with Withholding Tax	1,023,507.40
Rent Expense without withholding tax	₱ 61,936.52

[10] Exhibit "3-b"; BIR Records, p. 217.

Petitioner counters that it had properly withheld taxes due from rental payments made to its lessors, as shown by the returns and official receipts evidencing payment thereof to the BIR.[11] The portion of rental expense assessed for deficiency expanded withholding tax (EWT) amounting to ₱61,936.37 represents the value-added tax (VAT) component of rentals paid to certain lessors, and hence, not subject to EWT. These rental payments and the respective VAT components are broken down as follows:

Payee	Total Amt. Paid	Rental	VAT Component	EWT Paid (5%)
Security Development & Realty Corp.	₱ 268,800.05	₱244,363.68	₱ 24,436.37	₱ 12,218.18
Rosario Sabater	412,500.00	375,000.00	37,500.00	18,750.00
VAT subjected to EWT			**₱ 61,936.37**	

This Court agrees with the petitioner.

The fact that there is a discrepancy of ₱61,936.52 between the rental payments of ₱1,023,507.40, upon which the 5% creditable withholding tax remittances in the amount of ₱51,175.37 was based,[12] and the rental expense of ₱1,085,443.92 claimed by petitioner as deduction in its income tax return for the year 2000 is not disputed.[13] What is put into issue is whether the said discrepancy of ₱61,936.52 is subject to withholding tax.

As correctly pointed out by petitioner, the amount of ₱61,936.52 actually represents 10% VAT on the rentals it paid to two lessors: Security Development & Realty Corporation and Rosario Sabater.[14] The 10% VAT does not form part of the gross rental income payments subject to the mandatory 5% withholding tax under

[11] Exhibits "Q" to "CCC."
[12] Exhibits "Q" to "CCC."
[13] Exhibit 8; BIR Records, pp. 91 and 95.
[14] Exhibits I; R to CC; EE to PP.

Revenue Regulations No. 2-98, as amended. Hence, it was erroneous on the part of the respondent to disallow the amount of ₱61,936.52.

B. Other expenses in the amount of P198,835.94

In disallowing the amount of ₱198,835.94, representing 50% of petitioner's claimed deductions for various expenses as enumerated above, respondent stated in the Details of Discrepancies attached to the Formal Assessment Notice sent to petitioner that:[15]

> "xxx Verification disclosed that you have not provided any supporting documents or evidence to support your claimed deductions in violation of Sec. 34 (A)(1)(c) of the Tax Code which states that ' xxx No deduction from gross income shall be allowed under this Subsection (A) hereof, unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or adequate records: (I) the amount of the expense being deducted.....xxx'
>
> Since the following expenses constitute the deductions in conducting a business and there having no means by which to ascertain the correctness and accuracy of the said expense, 50% of the various expenses claimed were disallowed following the Mariano Zamora vs. Collector of Internal Revenue Case. Sec. 2.4 (c) of RMC 23-2000 states that '...if there is a showing that expenses have been incurred but the exact amount thereof cannot be ascertained due to absence of documentary evidence, it is the duty of the BIR to make an estimate of the deduction that may be allowable in computing the taxpayer's taxable income, bearing heavily against the taxpayer whose inexactitude is of his own making...'"

On the other hand, petitioner argues that the disallowance of these other expenses has no legal and factual basis. These were allegedly ordinary and necessary expenses incurred in the normal course of its operations, properly

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[15] Exhibit "3-b"; BIR Records, p. 217.

reflected in its books of accounts and fully supported by documents and receipts, which were submitted to respondent on November 27, 2003.

Petitioner presented as evidence the Consolidated Working Papers prepared by its External Auditor, Mr. Miguel del Rosario.[16] Petitioner points out that under Section 34(A)(1)(b) of the Tax Code, and existing jurisprudence, supporting documents other than official receipts and invoices are allowed to substantiate business expenses. Thus, petitioner avers that the Consolidated Working Papers which listed each document examined by the External Auditor constitute sufficient proof of its claimed expense deductions.

This Court disagrees with petitioner and finds the disallowance proper and in order.

Section 34(A)(1)(b) of the Tax Code provides as follows:

> "SEC. 34. *Deductions from Gross Income.*- x x x
>
> xxx xxx xxx
>
> (A) Expenses. –
>
> (1) Ordinary and Necessary Trade, Business or Professional Expenses. –
>
> (a) In General. – There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, including:
>
> xxx xxx xxx

[16] Exhibits "E" to "H", inclusive of sub-markings.

> (b) Substantiation Requirements.-No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

While the aforequoted provisions allow the presentation of other "adequate records" aside from official receipts in substantiating deductible business expenses, this Court finds the Consolidated Working Papers submitted by petitioner insufficient.[17] Based on this document alone, this Court cannot verify the nature and actual payment of the expenses indicated therein. Petitioner should have submitted the underlying documents from which the claimed expenses were based.

In an attempt to further prove its claimed expenses, petitioner presented the affidavit of its External Auditor, Mr. Miguel del Rosario, wherein it was stated that:[18]

> "(6) As basis for the preparation of the working papers for the year 2000, I examined the official receipts, journal vouchers, payroll slips, lease agreements, and other supporting documents to determine whether the expenses claimed by the Company as deduction from its gross income fairly presents the salaries and wages, rentals, transportation expenses, utilities, repairs, maintenance, office supplies, and other expenses for the year. x x x"

Unfortunately, though, the above testimony, unsupported by documentary proofs, is inadequate to establish petitioner's claim. Except for the Consolidated Working Papers which are self-serving, nothing more was presented by petitioner to prove the deductibility of the claimed expenses of P198,835.94.

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[17] Exhibits "E" to "H", inclusive of sub-markings.
[18] Exhibit "DDD".

C. Net Operating Loss Carry-over (NOLCO) in the amount of ₱121,694.48

Respondent treated petitioner's declared net loss amount of ₱121,694.48 as petitioner's additional income on the ground that:

> "xxxx – verification/investigation disclosed that your operation showed taxable income instead of net operating loss as previously claimed in your ITR. Considering that the tax benefit of this amount has already been forwarded to succeeding periods as provided for under Section 34(D)(3) of the NIRC, the same has been disallowed.
>
> The net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss."

Petitioner, on the other hand, contends that the add-back of the amount of ₱121,694.48 as NOLCO to the taxable income per assessment is erroneous. This amount does not allegedly represent a NOLCO, but the Net Loss sustained by petitioner for taxable year 2000 to which various disallowances had already been added. Petitioner further avers that with respect to any tax benefit that may have been enjoyed from such loss, no document or evidence is presented that said amount has been forwarded or deducted from income derived during the succeeding years, particularly in light of the consistent losses it incurred.

This Court finds for the respondent.

Tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[19]

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[19] Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc. and The Court of Tax Appeals, G.R. No. 76281, September 30, 1991 (202 SCRA 125).

In this case, absent of the income tax returns filed by petitioner for the succeeding three taxable years, to disprove that the amount of ₱121,694.48 was deducted as NOLCO, the amount of ₱121,694.48 shall be added back in computing for petitioner's taxable income for the year 2000. This is to recapture the tax benefit realized by petitioner in deducting the amount of ₱121,694.48 as NOLCO in the succeeding year 2001.

B. Deficiency Expanded Withholding Tax (Ewt)

Respondent assessed petitioner of deficiency EWT for taxable year 2000 in the amount of ₱5,005.81 for non-withholding of 5% creditable tax on the rental expense of ₱61,936.52.

As earlier discussed, the amount of ₱61,936.52 representing the 10% VAT on rentals paid by petitioner to its lessors is not subject to EWT. Thus, the deficiency EWT assessment in the amount of ₱5,005.81 should be cancelled.

Pawnshops are liable to VAT

In a catena of cases, this Court has consistently held that pawnshops are subject to value-added tax.[20]

The National Internal Revenue Code of 1997, as amended, ("Tax Code") provides:

> "SEC. 105. Persons Liable. — any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall

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[20] *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*, C.T.A. EB No. 108, March 21, 2006; *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, C.T.A. EB Nos. 60 and 62, March 24, 2006; *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*, C.T.A. EB No. 130, June 7, 2006; *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 6366, March 18, 2003; *Cebu Rosver Pawnshop, Inc. v. Commissioner of Internal Revenue,* C.T.A. Case No. 6483, April 1, 2003; *Kwik Loan Pawnshop, Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 6424, April 21, 2003; *Antam Pawnshop Corporation v. Commissioner of Internal Revenue*, C.T.A. Case No. 6510, May 14, 2003; *Westchester Corporation v. Commissioner of Internal Revenue*, C.T.A. EB No. 127, May 17, 2006; *A.L.L. Pawnshop, Inc. v. Commissioner of Internal Revenue,* C.T.A. Case No. 6482, September 3, 2003

be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code. . . ."

"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 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; 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. . . ."

The above-quoted sections show the intent of the legislature to subject all transactions involving the sale and exchange of services to 10% value-added tax. The phrase "sale or exchange of services" broadly embraces the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, by a person, regardless of whether the performance thereof calls for the exercise or use of the physical or mental faculties. It means any transaction undertaken in the course of business which does not constitute sales of goods and which is not expressly exempt from VAT under the Code or special law.[21]

In ruling that pawnshops are engaged in the sale of service, this Court explained in *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*:[22]

> "The value-added tax is a tax on transactions. It is imposed at every stage of the distribution process on the sale, barter, exchange of goods or property and on the performance of services, even in the absence of profit attributable thereto. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to the value added tax.
>
> "Undoubtedly, the subject provision of the law provides that pawnshops are subject to VAT. Pawnshop has been defined as a person or entity engaged in the business of lending money on personal property delivered as security for loans. In other words, the principal activity of a pawnshop is lending money at interest on the security of personal property. Indeed, the act of lending money at interest constitutes performance of service for a fee, remuneration or consideration.
>
> "Furthermore, the phrase "all kinds of services" is broad enough to cover the kind of service provided by pawnshops to their borrowers that is, lending money in consideration of personal property delivered as security. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to value-added tax. The personal properties delivered by clients of pawnshops as security for the loans obtained by the former from the latter are in the form of remuneration or consideration, for without such personal properties, the pawnshops will not extend any loan to a borrowers."

While pawnshops are not included in the enumeration found in Section 108(A) of the Tax Code, such enumeration is not intended to be exclusive. Even the word "including" preceding the enumeration does not effect a limitation on the transactions expressly mentioned therein.[23]

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[21] Deoferio, Jr. and Mamalateo, *The Value-Added Tax In the Philippines*, p. 90.
[22] C.T.A. EB No. 108, Marc 21, 2006.
[23] *Antam Pawnshop Corporation v. Commissioner of Internal Revenue*, CA-G.R. S.P. No. 79363, February 18, 2004. See also *Westchester Corporation v. Commissioner of Internal Revenue*, C.T.A. EB No. 127, May 17, 2006; *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, C.T.A. EB No. 60 and 62, March 24, 2006.

The pawnshops, being engaged in the business of lending money on personal property delivered as security for loans,[24] are considered as performing or rendering service for a fee, remuneration or consideration and, thus, liable to pay value-added tax similar to "lending investors" mentioned in Sec. 108. "As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to value-added tax xxx. The personal properties delivered by clients of pawnshops as security for the loan which the former obtained from the latter are in the form of remuneration or consideration, for without such personal properties, pawnshop will not extend any loan to a borrower. Thus, the phrase all kinds of services xxx is broad enough to cover the kind of service, that is, lending money in consideration of personal property delivered as security, provided by pawnshops to their borrowers."[25]

Furthermore, pawnshop transactions are not among the exempt transactions found in Section 109 of the Tax Code. There is likewise no express provision in law exempting pawnshops from value-added tax.[26] In *Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation,*[27] the Supreme Court ruled that a taxpayer not falling within the exemptions mentioned under Section 109 of the Tax Code is subject to value-added tax. We quote:

> "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." . . .

xxx xxx xxx

[24] Section 3 of P.D. No. 114 ("The Pawnshop Regulations Act").
[25] *Westchester Corporation v. Commissioner of Internal Revenue,* C.T.A. EB No. 127, May 17, 2006.
[26] *A.L.L. Pawnshop, Inc. v. Commissioner of Internal Revenue,* C.T.A. Case No. 6482, September 3, 2003.
[27] G.R. No. 125355, March 30, 2000.

"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. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.

"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, 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."

Pawn tickets are subject to DST

The issue of pawn tickets subject to documentary stamp tax is likewise settled. In *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.,* this Court ruled:[28]

"A document tax is an excise tax. It is a tax on documents, instruments and papers evidencing the acceptance, assignments, sale or transfer of an obligation, right or property incident thereto. Both the person issuing and the person to whom the document is issued may be liable for the tax. Being an excise tax, it is paid only once. In other words, it is really imposed on the privilege to enter into a transaction rather on the document. The law taxes the document because of the transaction. (The Law on Transfer and Business Taxation, Hector S. de Leon, 1998 Ed., p. 351)

'The Pawn ticket is the document evidencing the contract of pledge. In Cruz vs. Chua, G.R. No. 31018, November 6, 1929, 54 PHIL. 10, our Supreme Court refers to the pawn ticket as a contract of pledge as follows.

> 'In applying this provision to the situation before us, it must be borne in mind that the ordinary pawn ticket is a document by virtue of which the property in the thing pledged passes from hand to hand by mere delivery of the ticket: and the contract of pledge is, therefore, absolvable to bearer. It results that one who takes a pawn ticket in pledge acquires domination over the pledge: and it is the holder who must renew the pledge if it is to be kept alive.'

[28] C.T.A. EB Nos. 60 and 62, March 24, 2006.

'Hence, the pawn ticket is the logical document subject to DST on pledge under Section 195 of the NIRC (Revenue Memorandum Circular No. 43-91, May 27, 1991). In this regard, the Court of Appeals, in the Case of CIR vs. Antam Pawnshop Corp., CA-G.R. SP No. 79117, January 21, 2005, ruled that indeed, a pawn ticket is the logical document evidencing a pledge contract subject to DST. The Ninth Division of the Court of Appeals said:

"From the provision [Section 173 of the NIRC of 1997], the DST is indeed levied on the documents, but in respect of the transaction so had or accomplished. In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges and trusts and conveyances of property (emphasis ours). DST is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business separate and apart from the business itself. To reiterate, the DST imposed on the documents issued caused by the transactions enumerated subject to the DST. What actually matters is not the designation of the document but the nature of the transaction entered into as reflected in the document to be taxed.

Even granting that P.D. 114 defines a pawn ticket neither as a security nor a printed evidence of indebtedness but as a 'pawnbroker's receipt for a pawn,' it nevertheless defines a 'pawn' as the 'personal property delivered by the pawner to the pawnee as a security for a loan,' hence, the Pawnshop Regulation Act itself acknowledges that pawnshops enter into contract of pledge. . . . (citations omitted)

'In another case, the Special Third Division of the Court of Appeals likewise ruled that since the transactions of pawnshops require that the "property pawned, or pledged, is transferred to the pawnshop as security for the payment of money lent" thereby creating a contract of pledge, and that the pawn ticket has not been shown as included in the enumeration of documents and papers that are not subject to stamp tax under Section 199 of the NIRC, the pawnshop-respondent therein was ordered to pay both the deficiency Value-Added Tax assessment and the deficiency Documentary Stamp Tax assessment issued by the petitioner. The Court of Appeals ruled as follows:

'The law is clear. On every pledge of personal property, where the same shall be made as security for the payment of any definite and certain sum of money lent, a documentary stamp tax is imposed, based on the amount involved. Again, adhering to the fundamental rule in construction regarding taxation, any claim for exemption must be shown and based on the express provision of the law. Pawnshops are not included in the exemption provided by the National Internal Revenue Code, as amended.' (CIR vs. M. Lhuillier Pawnshop, Inc., C.A.-G.R. SP No. 67667, June 29, 2004).

"Section 195 of the 1997 NIRC imposes documentary stamp tax on the contract of pledge and other similar transactions. On the other hand, Section 199 of the same Code enumerates the documents and papers that are not subject to documentary stamp tax. FEPCI failed to prove that it is exempt from payment of the DST or that a pawn ticket is not a pledge instrument subject to DST. Accordingly, FEPCI is liable for the deficiency Documentary Stamp Tax on the pawn tickets evidencing the contracts of pledge."

More importantly, the Supreme Court ruled in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue* (G.R. No. 166786, May 3, 2006) as follows:

"Sec 173 and 195 of the NIRC, state:

SEC. 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments, and Papers. — Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes . . . . (Emphasis supplied)

SEC. 195. Stamp Tax on Mortgages, Pledges, and Deeds of Trust. — On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:

(a) When the amount secured does not exceed Five thousand pesos (P5,000), Twenty pesos (P20).

(b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five thousand pesos (P5,000), an additional tax of Ten pesos (10.00).

. . . . (Emphasis supplied)

"It is clear from the foregoing provisions that the subject of a DST is not limited to the document embodying the enumerated transactions. A DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto. In Philippine Home Assurance Corporation v. Court of Appeals, it was held that:

"In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges and trusts, and conveyances of real property. (Emphasis added)

"Pledge is among the privileges, the exercise of which is subject to DST. A pledge may be defined as an accessory, real and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or to a third person movable property as security for the performance of the principal obligation, upon the fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or to the third person. This is essentially the business of pawnshops which are defined under Section 3 of Presidential Decree No. 114, or the Pawnshop Regulation Act, as persons or entities engaged in lending money on personal property delivered as security for loans.

"Section 12 of the Pawnshop Regulation Act and Section 21 of the Rules and Regulations For Pawnshops issued by the Central Bank to implement the Act, require every pawnshop or pawnbroker to issue, at the time of every such loan or pledge, a memorandum or ticket signed by the pawnbroker and containing the following details: (1) name and residence of the pawner; (2) date the loan is granted; (3) amount of principal loan; (4) interest rate in percent; (5) period of maturity; (6) description of pawn; (7) signature of pawnbroker or his authorized agent; (8) signature or thumb mark of pawner or his authorized agent; and (9) such other terms and conditions as may be agreed upon between the pawnbroker and the pawner. In addition, Central Bank Circular No. 445, prescribed a standard form of pawn tickets with entries for the required details on its face and the mandated terms and conditions of the pledge at the dorsal portion thereof.

"Section 3 of the Pawnshop Regulation Act defines a pawn ticket as follows:

"Pawn ticket" is the pawnbrokers' receipt for a pawn. It is neither a security nor a printed evidence of indebtedness."

"True, the law does not consider said ticket as an evidence of security or indebtedness. However, for purposes of taxation, the same pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge. At any rate, it is not said ticket that creates the pawnshop's obligation to pay DST but the exercise of the privilege to enter into a contract of pledge. There is therefore no basis in petitioner's assertion that a DST is literally a tax on a document and that no tax may be imposed on a pawn ticket.

"The settled rule is that tax laws must be construed in favor of the taxpayer and strictly against the government; and that a tax cannot be imposed without clear and express words for that purpose. Taking our bearing from the foregoing doctrines, we scrutinized Section 195 of the NIRC, but there is no way that said provision may be interpreted in favor of petitioner. Section 195 unqualifiedly subjects all pledges to DST. It states that "[o]n every . . . pledge . . . there shall be collected a documentary stamp tax . . . ." It is clear, categorical, and needs no further interpretation or construction. The explicit tenor thereof requires hardly anything than a simple application.

"The onus of proving that pawnshops are not subject to DST is thus shifted to petitioner. In establishing tax exemptions, it should be borne in mind that taxation is the rule, exemption is the exception. Accordingly, statutes granting tax exemptions must be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority. One who claims an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.

"In the instant case, there is no law specifically and expressly exempting pledges entered into by pawnshops from the payment of DST. Section 199 of the NIRC enumerated certain documents which are not subject to stamp tax; but a pawnshop ticket is not one of them. Hence, petitioner's nebulous claim that it is not subject to DST is without merit. It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. Exemption from taxation is never presumed. For tax exemption to be recognized, the grant must be clear and express; it cannot be made to rest on doubtful implications."

As a summary, petitioner is liable to pay deficiency income tax for taxable year 2000 in the amount of ₱121,057.86, computed as follows:

Net Loss per Return		₱(121,694.48)
Add: Disallowed Expense (50% Rule)		
Office Supplies	₱24,298.00	
Travel and Transportation	1,137.50	
Representation & Entertainment	550.00	
Power, Light & Water	69,960.08	
Postage Telephone and Cable	32,065.48	
Repair and Maintenance	31,196.12	
Taxes and Licenses	16,001.26	
Donation	3,725.00	
Miscellaneous Expense	19,902.50	198,835.94
Taxable Income		₱ 77,141.46
Add: NOLCO		121,694.48
Adjusted Taxable Income		₱ 198,835.94
Tax Due		₱ 63,627.50
Add: 25% Surcharge		15,906.88
20% Interest (4.16.01 to 7.20.04)		41,523.48
Amount still due		₱ 121,057.86

It is to be noted that a 25% surcharge was imposed pursuant to Section 248(A)(3) of the NIRC of 1997, as amended.

As regards VAT and DST, petitioner is liable to pay the following:

ASSESSMENT NOTICE No. VT-53463-00-04-654

DEFICIENCY VALUE-ADDED TAX (VAT)

Tax Due	₱ 268,140.40
Add: Surcharge (25%)	67,035.10
Interest (01-26-01 to 02-24-04)	165,292.02
TOTAL AMOUNT DUE	**₱500,467.52**

ASSESSMENT NOTICE No. DS-53463-00-04-654

DEFICIENCY DOCUMENTARY STAMP TAX (DST)

Tax Due	₱ 36,980.00
Add: Surcharge (25%)	9,245.00
Interest (01-11-01 to 02-24-04)	23,099.83
TOTAL AMOUNT DUE	**₱ 69,324.83**

The Court, however, does not agree with respondent that 50% surcharge should be imposed against petitioner. The surcharge of fifty percent (50%) is imposed by Sec. 248 (B) only in two instances. First, in case of willful neglect to file the return within the period prescribed and second, in case a false or fraudulent return is willfully made. Thus, it is not enough that the taxpayer failed to file the required tax return or that the return is false to justify the imposition of the 50% for fraud. In the case at bar, respondent failed to adduce evidence that petitioner had an intention to evade the payment of tax. Petitioner did not pay the required tax because of its belief that it is not liable therefore. However, it is liable to a surcharge of only twenty five percent (25%) pursuant to Sec. 248 (A)(3) of the Tax Code.

WHEREFORE, the Petition for Review is granted insofar as the assessment for deficiency expanded withholding tax. Accordingly, the assessment in the amount of Five Thousand Five Pesos and Eighty One Centavos (₱5,005.81) for deficiency expanded withholding tax against petitioner is hereby **WITHDRAWN** and **CANCELLED**.

However, petitioner is hereby ordered to pay respondent the amount of **ONE HUNDRED TWENTY ONE THOUSAND FIFTY SEVEN PESOS AND EIGHTY SIX CENTAVOS (₱121,057.86)** as deficiency income tax; **FIVE HUNDRED THOUSAND FOUR HUNDRED SIXTY SEVEN PESOS and FIFTY TWO CENTAVOS (₱500,467.52)** as deficiency Value-Added Tax; and **SIXTY NINE THOUSAND THREE HUNDRED TWENTY FOUR PESOS AND EIGHTY THREE CENTAVOS (₱69,324.83)** as deficiency documentary stamp tax; plus 20%

delinquency interest from February 24, 2004 until the amounts are paid in full pursuant to Section 249 of the Tax Code.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division