Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

KABALIKAT PARA SA MAUNLAD NA BUHAY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9003

Members:
CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
JAN 03 2018
1:00 p.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review, filed by petitioner, on March 2, 2015, seeking the cancellation and withdrawal of respondent's assessment for deficiency value-added tax (VAT) for calendar year (CY) ended December 31, 2012[1] in the amount of ₱48,246,334.79, inclusive of interest, surcharge and compromise penalty.

Petitioner is a non-stock, non-profit corporation, duly organized under the laws of the Republic of the Philippines to conduct microfinance activities pursuant to Republic Act (RA) No. 8425, with principal office at No. 12 San Francisco Street, Karuhatan, Valenzuela City, Philippines.[2]

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[1] Par. I, Amended Pre-Trial Order, Docket (Vol. I), p. 543 and Par. 3, Joint Stipulation of Facts (JSF), Docket (Vol. I), p. 375. However, the period covered stated in the Revised Assessment Notice and Formal Letter of Demand (Exhibits "P-3" and "P-3-a") is 1st semester 2012.

[2] Par. 1, JSF, Docket (Vol. I), p. 375.

Respondent Commissioner of Internal Revenue (CIR) is vested under the appropriate laws with authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.

On November 27, 1986, petitioner was registered as a non-stock, non-profit civic organization with the Securities and Exchange Commission (SEC) under SEC Registration No. 136770.[3]

From its original Articles of Incorporation, petitioner was established to assist the micro entrepreneur sector.[4]

On April 22, 2006, petitioner amended the second article of its Articles of Incorporation to comply with SEC Memorandum No. 2, dated January 18, 2006 (SEC Memorandum 2-2006), which requires all non-stock, non-profit corporation including non-government organizations engaged in microfinance activities to state in the purpose clause of their Articles of Incorporation that they conduct microfinance operations pursuant to RA No. 8425, or the Social Reform and Poverty Alleviation Act.[5] Petitioner was issued a Certificate of Filing of Amended Articles of Incorporation by the SEC on November 17, 2006.[6]

Petitioner was issued by then BIR Revenue District Office No. 21, Malinta, Valenzuela City, a Registration Certificate for Non-VAT Taxpayer (NV-3B-P1-003539) dated December 29, 1989 signed by Revenue District Officer Renato L. Manalili.[7]

On March 26, 2014, petitioner received a Final Assessment Notice (FAN) and a Formal Letter of Demand dated March 26, 2014 stating that petitioner incurred supposed deficiency VAT for income derived from its microfinance activities, in the total amount of ₱46,602,536.24, inclusive of surcharge and interest.[8]

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[3] Par. 4, JSF, Docket (Vol. I), p. 376, Exhibits "P-7" and "P-7-a".
[4] Par. 5, JSF, Docket (Vol. I), p. 376.
[5] Par. 6, JSF, Docket (Vol. I), p. 376.
[6] Par. 8, JSF, Docket (Vol. I), p. 378; Exhibit "P-8".
[7] Par. 9, JSF, Docket (Vol. I), p. 378; Exhibit "P-13".
[8] Par. 10, JSF, Docket (Vol. I), p. 378; Exhibits "P-1" and "P-1-a".

On April 25, 2014, petitioner filed a protest/request for reinvestigation on the assessment.[9]

Thereafter, on November 4, 2014, petitioner received a revised Assessment Notice bearing the number 34006 with attached undated Formal Letter of Demand stating that petitioner incurred supposed deficiency VAT for income derived from its microfinance activities, in the total amount of ₱48,246,334.79, inclusive of surcharge and interest.[10]

On November 20, 2014, petitioner filed a protest on the revised Assessment Notice No. 34006, submitting documents in support of the said protest on January 14, 2015.[11]

On January 30, 2015, petitioner received the decision of the Office of the Regional Director concerning petitioner's protest on the revised Assessment Notice, which denied petitioner's protest.[12]

On March 2, 2015, petitioner filed the instant Petition for Review to appeal respondent's denial of its protest.

On March 26, 2015, respondent filed his Answer (with Special Affirmative Defenses)[13] alleging, among others, that petitioner has not secured any confirmatory tax exemption ruling from the CIR with regard to VAT; that petitioner's gross receipts derived from its microfinancing activities are subject to 12% VAT pursuant to Section 105 of the NIRC of 1997; that Section 105 of the NIRC of 1997 is crystal clear and explicitly states that even a non-stock and non-profit organization or government entity is liable to pay VAT; that this Court has made certain pronouncements that petitioner is subject to VAT as supported by law, jurisprudence and BIR implementing rules and regulations; that petitioner violated the rule on *litis pendencia* and/or res judicata; and thus, the petition for review must fail and that petitioner was rightfully assessed by the BIR for deficiency VAT.

A Notice of Pre-Trial Conference was issued by the Court on March 27, 2015, setting the case for pre-trial conference on May 14,

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[9] Exhibit "P-2".
[10] Par. 11, JSF, Docket (Vol. I), pp. 378-379; Exhibits "P-3" and "P-3-a".
[11] Par. 12, JSF, Docket (Vol. I), p. 379; Exhibits "P-4" and "P-5" to "P-5-d".
[12] Par. 13, JSF, Docket (Vol. I), p. 379; Exhibit "P-6".
[13] Docket (Vol. I), pp. 76-93.

2015,[14] but later reset to July 23, 2015[15]. Accordingly, the Pre-Trial Brief for the Petitioner[16] was filed on July 20, 2015 while the Pre-Trial Brief for the Respondent[17] was filed on July 21, 2015.

On July 24, 2015, petitioner filed a Motion for Leave to Admit Supplemental Petition for Review with Entry of Appearance[18], which was opposed to by respondent.[19] The Court denied the motion in the Resolutions dated August 18, 2015[20] and October 9, 2015[21].

On November 23, 2015, the Court issued a Pre-Trial Order[22], hence, the pre-trial was deemed terminated.

Thereafter, the parties submitted their Joint Stipulation of Facts[23] on March 17, 2016. Hence, on March 23, 2016, the Court issued an Amended Pre-Trial Order[24], approving the parties' JSF and the pre-trial was deemed terminated.

During trial, petitioner presented Ms. Maria Wilma C. Velarde, petitioner's Acting Finance Manager,[25] and Eduardo C. Jimenez, petitioner's President and Acting Executive Director,[26] as its witnesses. Petitioner formally offered Exhibits "P-1" to "P-13" and "P-16" to "P-23", inclusive of sub-markings,[27] which were all admitted in evidence except for Exhibits "P-18", "P-19", "P-20 and P-20-a".[28]

On the other hand, respondent manifested that the issues to be resolved by this Court are purely legal and that he has no witness to present in this case.[29]

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[14] Docket (Vol. I), pp. 94-95.
[15] Resolution dated June 22, 2015, Docket (Vol. I), pp. 128-137.
[16] Docket (Vol. I), pp. 138-145.
[17] Docket (Vol. I), pp. 146-148.
[18] Docket (Vol. I), pp. 269-288.
[19] Comment/Opposition filed on August 11, 2015, Docket (Vol. I), pp. 289-293.
[20] Docket (Vol. I), pp. 311-312.
[21] Docket (Vol. I), pp. 344-346.
[22] Docket (Vol. I), pp. 352-355.
[23] Docket (Vol. I), pp. 375-382.
[24] Docket (Vol. I), pp. 543-546.
[25] Minutes of the Hearing dated April 18, 2016, Docket (Vol. II), p. 599; Exhibit "P-22".
[26] Minutes of the Hearing dated July 13, 2016, Docket (Vol. II), p. 675; Exhibit "P-23".
[27] Petitioner's Formal Offer of Evidence filed on July 25, 2016; Docket (Vol. II), pp. 677-681.
[28] Resolutions dated September 15, 2016 and November 29, 2016, Docket (Vol. II), pp. 889-891 and 920-926, respectively.
[29] Minutes of the Hearing dated July 13, 2016, Docket (Vol. II), p. 675.

The case was submitted for decision on January 27, 2017[30] considering the Memorandum for the Respondent[31] filed on October 13, 2016 and Petitioner's Memorandum[32] filed on January 9, 2017.

The parties agreed that the main issue[33] to be resolved in this case is:

> "Whether or not petitioner is liable to pay deficiency value-added tax (VAT) for CY 2012 in the amount of ₱48,246,334.79[34] plus surcharge and interest.
>
> The main issue is broken down into the following sub-issues:
>
> 1. Whether or not the income from petitioner's microfinance activities is subject to VAT.
>
> 2. In the alternative, whether or not petitioner can be considered a non-bank financial intermediary subject to percentage tax.
>
> 3. Finally, whether or not respondent can assess KMBI in a tax category different from other MFI entities similarly situated."

The Court has jurisdiction to entertain the present case.

Section 228 of the NIRC of 1997, as amended, governs the periods in filing an administrative protest, as follows:

> "**SEC. 228. Protesting of Assessment**. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings xxx.

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[30] Resolution dated January 27, 2017, Docket (Vol. II), p. 956.
[31] Docket (Vol. II), pp. 897-912.
[32] Docket (Vol. II), pp. 940-955.
[33] Issues, JSF, Docket (Vol. I), p. 382.
[34] Erroneously stated as ₱48,266,334.79 in the JSF, Docket (Vol. I), p. 382.

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> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days** from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**" (Emphases supplied)

Petitioner received a Final Assessment Notice and a Formal Letter of Demand (FLD)[35] on March 26, 2014, stating that petitioner, as a lending investor, is liable for deficiency VAT on its service income on loan fees representing interest on loans, membership fees and processing fees from clients, computed as follows:[36]

Vatable sales per returns		₱ -
Add: Adjustments		
Interest income – loan fees	₱ 203,837,819.73	
Processing fees	15,838,575.00	
Service fees	134,421.00	
Micro-insurance fee	14,845,230.00	
CGLI fees	185,321.96	
Passbook	54,345.00	
Other income	277,137.84	
Non MED income	193,494.16	235,366,344.69
Vatable sales per audit		235,366,344.69
Multiply by VAT rate		12%
Basic deficiency VAT		28,243,961.36
Surcharge 25%		7,060,990.34
Interest 20% p.a.		11,297,584.54
Total Deficiency VAT		**₱ 46,602,536.24**

[35] Par. 10, JSF, Docket (Vol. I), p. 378; Although the date received written on Exhibit "P-1" is March 28, 2014.
[36] Exhibits "P-1" and "P-1-a".

On April 25, 2014, petitioner filed a protest/request for reinvestigation on the assessment.[37]

Thereafter, on November 4, 2014, petitioner received a revised Assessment Notice, with attached undated FLD, reiterating petitioner's deficiency VAT in the amount of ₱48,246,334.79, including the adjusted interest.[38] The FLD stated that petitioner's receipts/income should be subjected to VAT pursuant to Sections 105 and 108 of the NIRC of 1997, as amended.

On November 20, 2014, petitioner filed a protest on the revised assessment and submitted the documents in support thereof on January 14, 2015.[39]

On January 30, 2015, petitioner received the decision[40] of the Office of the Regional Director denying the protest on the revised assessment; the dispositive portion of which states:

> "**IN VIEW OF THE FOREGOING**, this Office hereby DENIES your protest on the subject revised assessment on VAT for the 1st semester of 2012 for lack of merit.
>
> This is the final decision of the undersigned on the KMBI's protest on VAT assessment of ₱48,246,334.79, inclusive of increments, for the 1st semester of 2012 as the authorized representative of the Commissioner of Internal Revenue (CIR) in BIR, Revenue Region No. 5, Caloocan City."

In accordance with Section 228 of the NIRC of 1997, as amended, if the protest is denied in whole or in part, the taxpayer adversely affected by the decision of the respondent may appeal to this Court within thirty (30) days from the receipt of said decision. Thus, petitioner had a period of thirty (30) days from January 30, 2015, or until March 1, 2015, within which to file its Petition for Review before this Court.

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37 Exhibit "P-2".
38 Par. 11, JSF, Docket (Vol. I), pp. 378-379; Exhibits "P-3" and "P-3-a".
39 Par. 12, JSF, Docket (Vol. I), p. 379; Exhibits "P-4" and "P-5" to "P-5-d".
40 Par. 13, JSF, Docket (Vol. I), p. 379; Exhibit "P-6".

Since March 1, 2015 fell on Sunday, petitioner filed the instant petition[41] on March 2, 2015, which was the next working day. Clearly, this Court has jurisdiction over the case. That being the case, the Court shall now discuss the merits of the case.

Petitioner's microfinance activities are subject to VAT.

Petitioner argues that the income derived in connection with its non-stock, non-profit activity (*i.e.,* microfinance), not being derived from sale of service or goods in the course of business, is exempt from VAT.

Petitioner explains that microfinance, as in this case, is a legally mandated function when undertaken pursuant to RA No. 8425 otherwise known as the Social Reform and Poverty Alleviation Act. The beneficiaries of petitioner are poor people who have no access to formal financial institutions since they have no collateral and the size of their loans is too small to be considered by banks.

Petitioner further argues that, from the nature of the activity, microfinance is outside the pursuit of commercial or business endeavors. Thus, Sections 105 and 108 of the NIRC of 1997, as amended, find no application in the instant case, whether or not profit is derived from the said activity.

The Court does not agree.

VAT is a form of sales tax. It is a tax on consumption levied on the sale, barter, exchange or lease of goods or properties and services in the Philippines and on importation of goods into the Philippines. It is an indirect tax, which may be shifted or passed on to the buyer, transferee or lessee of goods, properties or services.[42]

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[41] Docket (Vol. I), pp. 6-22.
[42] BIR "Tax Information" definition.

Section 105 of the NIRC of 1997, as amended, provides who are subject to VAT and explains the phrase "in the course of trade or business" as follows:

> "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 be subject to the value-added tax (VAT)** imposed in Sections 106 to 108 of this Code.
>
> x x x x x x x x x
>
> The phrase **"in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income whether or not it sells exclusively to members or their guests), or government entity.**" *(Emphasis supplied)*

The foregoing section explicitly provides that even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, 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.[43]

In the case of *Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation*[44], the Supreme Court addressed the issue at hand and ruled that:

> "COMASERCO contends that the term 'in the course of trade or business' requires that the 'business' is carried on with a view to profit or livelihood. It avers that the activities of the entity must be profit-oriented. COMASERCO submits that it is not motivated by profit, as

[43] *Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation*, G.R. No. 125355, March 30, 2000.
[44] *Ibid.*

> defined by its primary purpose in the articles of incorporation, stating that it is operating 'only on reimbursement-of-cost basis, without any profit.' Private respondent argues that profit motive is material in ascertaining who to tax for purposes of determining liability for VAT.
>
> We disagree.
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> x x x x x x x x x
>
> Contrary to COMASERCO's contention the above provision [Section 105 of the NIRC of 1997] clarifies that even *non-stock, non-profit*, organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, 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. **The term 'in the course of trade or business' requires the regular conduct or pursuit of a commercial or an economic activity regardless of whether or not the entity is profit-oriented.**
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> x x x 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. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT**." *(Emphasis supplied)*

Accordingly, petitioner's act of lending money at interest – even if, as the petitioner asserts, the income merely plows back into its general funds to be used once again in social welfare activities[45] – is subject to the imposition of VAT. In fact, Section 108 of the NIRC of

[45] Par. 25, Petition for Review, Docket (Vol. I), p. 15.

1997, as amended, defines the phrase "sale or exchange of services" as the "performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration." Section 108 does not distinguish microfinancing from commercial lending. *Ubi lex non distinguit, nec nos distinguere debemus.* Where the law does not distinguish, we ought not to distinguish.[46]

All told, 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.[47]

Undeniably, micro-financing services do not fall within the exemptions enumerated Section 109 of the NIRC of 1997, as amended. Under the familiar rule of statutory construction of *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned. Thus, if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication be excluded from its operation and effect.[48] This rule, as a guide to probable legislative intent, is based upon the rules of logic and natural workings of the human mind.[49] Accordingly, petitioner's microfinance activities are subject to VAT as discussed above.

However, in view of the enactment of RA No. 10693 or the Microfinance NGOs Act on November 3, 2015, duly registered and accredited Microfinance NGOs are granted a preferential tax rate of two percent (2%) in lieu of all national taxes[50]. Unfortunately, the

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[46] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005.

[47] *Davao Gulf Lumber Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. No. 117359 July 23, 1998.

[48] *Misael P. Vera, as Commissioner of Internal Revenue, and Jaime Araneta, as Regional Director, Revenue Region No. 14, Bureau of Internal Revenue vs. Hon. Jose F. Fernandez, Judge of the Court of First Instance of Negros Occidental, Branch V, and Francis A. Tongoy, Administrator of the Estate of the late Luis D. Tongoy*, G.R. No. L-31364, March 30, 1979.

[49] *Commissioner of Internal Revenue vs. Trustworthy Pawnshop, Inc.*, G.R. No. 149834, May 2, 2006, citing *Republic of the Philippines and the Director of Lands vs. Hon. Numeriano G. Estenzo, et al.*, G.R. No. L-35376, September 11, 1980.

[50] SEC. 20. *Taxation of Microfinance NGOs.* — A duly registered and accredited Microfinance NGO shall pay a two percent (2%) tax based on its gross receipts from microfinance operations in lieu of all national taxes: *Provided*, That preferential tax treatment shall be accorded only to NGOs whose primary purpose is microfinance and only on their microfinance operations catering to the poor and low-income individuals in alignment with the main goal of this Act to alleviate poverty. The non-microfinance activities of Microfinance NGOs shall be subject to all applicable regular taxes.

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disputed assessment covers taxable year 2012, hence, RA No. 10693 is still inapplicable to the present case.

Petitioner cannot be considered as a non-bank financial intermediary.

Assuming it is not exempt from VAT, petitioner contends that it should be classified as a *de facto* non-bank financial intermediary, as defined under Section 2.3 of RR No. 9-2004, subject to 0% to 5% percentage tax under Section 122 of the NIRC of 1997, as amended.

Under Section 2.3 of RR No. 9-2004, entities primarily engaged in lending money are considered as non-bank financial intermediaries, to wit:

> "2.3. **Non-bank Financial Intermediaries** – shall refer to **persons or entities whose principal functions include the lending**, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally." *(Emphasis supplied)*

Petitioner submits that it offers microcredit in amounts ranging from ₱4,000.00 to ₱20,000.00 to certain qualified beneficiaries. The fact that petitioner's lending of money is limited to the "poor sectors of the society" does not negate the fact that petitioner is still engaged in lending, albeit in a selected target market.

Again, the Court is not convinced.

Section 122 of the NIRC of 1997, as amended, reads as follows:

> "Sec. 122. *Tax on Other Non-Bank Finance Intermediaries.* - There shall be collected a tax of five percent (5%) on the gross receipts derived by other nonbank financial intermediaries doing business in the Philippines, from interest, commissions, and discounts from lending activities, as well as income from financial leasing, shall be taxed on the basis of remaining maturities of the instruments from which such receipts are derived, in accordance with the following schedule:
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> | | |
> |---|---|
> | Maturity period is five (5) years or less | 5% |
> | Maturity period is more than five (5) years | 1% |
>
> *Provided, however,* That in case the maturity period is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction and the correct rate shall be applied accordingly.
>
> *Provided, finally,* That the generally accepted accounting principles as may be prescribed by the Securities and Exchange Commission for other non-bank financial intermediaries shall likewise be the basis for the calculation of gross receipts.
>
> Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar financing activities."

Under the General Banking Act or RA No. 337, as amended, the term "financial intermediaries" is defined as "persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others."

Petitioner seeks to align itself with the definition of financial intermediaries to escape VAT liability. It asserts that the activities under its Amended Articles of Incorporation[51] are the same as those of non-bank financial intermediaries.

However, perusal of its Articles reveals that the "lending function" it claims to undertake with the poor falls within the definition of microfinance under RA No. 8425; Section 3(j) of which provides:

> "(j) 'Microfinance'- A credit and savings mobilization program **exclusively for the poor** to improve the asset base of households and expand the access to savings of the poor. **It involves the use of viable alternative credit schemes and savings programs including the extension of small loans**, simplified loan application procedures, group character loans, collateral-free arrangements, alternative loan repayments, minimum requirements for savings, and small denominated savers' instruments;" *(Emphasis supplied)*

Petitioner cannot simply insist that the extension of loans to the poor is no different from other entities whose principal function is to lend money, so as just to fit within the definition of financial intermediaries and, consequently, be entitled to a different tax treatment.

Moreover, Section 22(W) of the NIRC of 1997, as amended, defines non-bank financial intermediary as follows:

> "(W) the term '*non-bank financial intermediary*' means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities."

True, petitioner's Amended Articles of Incorporation states its corporate purposes which are, among others, "[t]o provide access to economic, financial, social and other developmental opportunities to the small cottage and micro entrepreneurial sector of society and other poor and disadvantaged sectors so that they may live in abundance with strengthened faith in God and in right relationships with their fellowmen and the rest of creation" and "[t]o conduct micro-finance operations pursuant to RA 8425 x x x".

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[51] Exhibits "P-8" and "P-8-a".

Nonetheless, it cannot be considered as "other non-bank financial intermediary" simply on the basis of its bare allegation; there is nothing in the records that would show that it has been authorized by the BSP to perform quasi-banking activities.

In civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence. It is incumbent upon the party claiming affirmative relief from the court to convincingly prove its claim. Bare allegations, unsubstantiated by evidence, are not equivalent to proof; in short, mere allegations are not evidence.[52]

Respondent can assess petitioner in a tax category different from other MFI entities similarly situated.

Petitioner argues that Section 28 of Article VI of the 1987 Constitution mandates taxation to be uniform and equitable. Uniformity 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. Thus, petitioner submits that the "lending of monies to the poor" cannot be a substantial factor to distinguish petitioner from "other non-bank financial intermediaries" such as pawnshops.

Petitioner's contention is untenable.

Section 3 of Presidential Decree No. 114, or otherwise known as "Pawnshop Regulation Act", defines pawnshop as "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 pawn brokerage." Also, Section 6[53] of the same Decree requires registration with the Central Bank before commencement of the pawnshop's operation.

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[52] *Ermelinda C. Manaloto, et al. vs. Ismael Veloso III,* G.R. No. 171365, October 6, 2010.

[53] "SEC. 6. Requirement of registration with the Central Bank. – Any individual, corporation, or association duly registered and licensed to engage in the pawnshop business shall file an information sheet, under oath, with the Central Bank before commencement of actual operations: Provided, however, That pawnshops duly licensed and operating before the approval of this Decree shall, within six months from the date of effectivity of the same, register with the

The case of *First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue*[54], is instructive as to why pawnshops were classified as non-financial intermediaries, to wit:

> "The tax treatment of pawnshops as non-bank financial intermediaries is not without basis.
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> x x x x x x x x x
>
> That pawnshops are to be treated as non-bank financial intermediaries is further bolstered by the fact that pawnshops are under the regulatory supervision of the *Bangko Sentral ng Pilipinas* and covered by its Manual of Regulations for Non-Bank Financial Institutions. The Manual includes pawnshops in the list of non-bank financial intermediaries, *viz.*:
>
> § 4101Q.1 *Financial Intermediaries*
>
> x x x
>
> Non-bank financial intermediaries shall include the following:
>
> (1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, **pawnshop**, money broker x x x. (Emphasis supplied)
>
> *Revenue Regulations No. 10-2004*, in fact, recognized these bases, to wit:
>
> SEC. 2. BASES OF QUALIFYING PAWNSHOPS AS NON-BANK FINANCIAL INTERMEDIARIES. -

Central Bank. For this purpose, the Central Bank shall furnish pawnshops, upon request, with necessary copies of the prescribed information sheet."

[54] G.R. No. 174134, July 30, 2008.

> Whereas, in relation to Sec. 2.3 of Rev. Regs No. 9-2004 defining Non-bank Financial Intermediaries, the term 'pawnshop' as defined under Presidential Decree No. 114 which authorized its creation, *to be a person or entity engaged in the business of lending money*, all fall within the classification of Non-bank Financial Intermediaries and therefore, covered by Sec. 4 of R.A. No. 9238.
>
> This classification is equally supported by Subsection 4101Q.1 of the BSP Manual of Regulations for Non-Bank Financial Intermediaries and reiterated in BSP Circular No. 204-99, classifying pawnshops as one of Non-bank Financial Intermediaries within the supervision of the Bangko Sentral ng Pilipinas.

Ultimately, R.A. No. 9238 categorically confirmed the classification of pawnshops as non-bank financial intermediaries."

In sum, petitioner's microfinancing activities are subject to the imposition of VAT.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. The deficiency value-added tax assessment issued by respondent against petitioner for CY 2012 is **UPHELD**. Accordingly, petitioner is ordered to pay **₱35,304,951.70**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic deficiency VAT	₱ 28,243,961.36
Add: 25% Surcharge	7,060,990.34
Total deficiency VAT	**₱ 35,304,951.70**

In addition, petitioner is ordered to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱28,243,961.36 computed from January 25, 2013 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱35,304,951.70, and on the 20% deficiency interest which have accrued as aforestated in (a), computed from January 30, 2015 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice