REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TRUSTWORTHY PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5691

COLLECTOR OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 07 2000

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DECISION

This case emanates from an assessment dated June 13, 1997 issued against Petitioner in the amount of P2,108,335.19 representing deficiency percentage tax for the year 1994.

Petitioner is a domestic corporation duly engaged in the business of pawnshop business.

By virtue of Revenue Memorandum Order (RMO) No. 15-19 dated March 11, 1991 and Revenue Memorandum Circular (RMC) 43-91 dated May 27, 1991, which provide that "the pawnshop business is akin to the Lending Investor's business activity" and should therefore be assessed the 5% percentage taxes being imposed upon Lending Investors", a demand letter and assessment notice bearing number 31-PT-13-94-97-6-073, both dated June 13, 1997, were issued by the Chief of the Assessment Division of Revenue Region No. 7 of Cebu City assessing Petitioner for deficiency percentage tax in the amount of P2,108,335.19, inclusive of surcharges and interest, covering the year 1994. In addition to said amount was a compromise penalty of P93,000.00.

Consequently, Petitioner filed an administrative protest and/or motion for reconsideration on July 4, 1997, on the grounds that:

I. There is no specific provision in either the Tax Code or the VAT Law which expressly imposes on pawnshops the 5% tax on its gross income;

II. Pawnshops are widely different from lending investors which are subject to the 5% tax on gross income under the specific provision of the Tax Law;

III. Revenue Memorandum Order No. 15-91 (RMO 15-91) dated March 11, 1991 is no implementing any particular provision of the internal revenue laws, but is in fact a new and additional tax measure on pawnshops, which only Congress may enact;

IV. RMO No. 15-91 is a taxation by implication that impliedly amends the Tax Law and which is proscribed by law; and

V. RMO No. 15-91 which singles out pawnshops among other lending and financial operations partakes of a "class legislation".

The above protest having remained unacted, Petitioner elevated the issue to the Commissioner of Internal Revenue on March 16, 1998.

In its petition for review as well as in its memorandum, Petitioner alleges that the inaction of the Commissioner prompted it to appeal to the Court of Tax Appeals pursuant to Section 228 of Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, to wit:

"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 the one hundred eighty (180)-day period,; otherwise, the decision shall become final, executory and demandable".

In fact, Petitioner claims that it had seasonable filed the instant petition on September 15, 1998. Considering that the one hundred eighty days lapsed on September 13, 1998, it had thirty days therefrom or until October 13, 1998 within which to file its judicial appeal. Thus, the filing on September 15, 1998 with this Court of its appeal was timely.

However, records indubitably show that the petition was filed only on November 11, 1998 and on September 15, 1998 as alleged. In other words, way beyond the period allowed by law.

If We were to take into account these facts alone, Petitioner's case should be outrightly dismissed. But fortunately for the Petitioner, a warrant of distraint and/or levy was issued by the Respondent on October 12, 1998 which as per our resolution of March 26, 1999, constituted a final decision of denial on Petitioner's protest by the Commissioner (CTA rec., p. 64). Further, Our deciding the case at bar on the merits is in consonance with Our ruling in the case of Lascona Land Co., Inc. versus Commissioner of Internal Revenue, et al., CTA Case No. 5777, January 4, 2000, that in cases of inaction, Section 228 of the Tax Code gives the taxpayer an option to appeal to Us within thirty days from the lapse of one hundred eighty day or to wait for positive action on the part of the Commissioner even after the lapse of said period, without the assessment becoming final, executory and demandable. Accordingly, the said warrant being equivalent to a final decision of the Commissioner, Petitioner had thirty days therefrom to appeal to Us. The filing therefore of the petition on November 11, 1998 was timely albeit on the wrong premise. Petitioner is however admonished to be well conversant of its facts and laws.

This case involves pure questions of law for which reason Respondent opted to submit the case for decision based on the pleadings.

Petitioner vehemently argues that pawnshops are not lending investors, hence, not subject to 5% percentage tax. Respondent, however, sees the matter differently, contending that the legal definition of "lending investors" (Section 157(u) of the Tax Code), is broad enough to include pawnshop operators.

Petitioner also maintains that RMO No. 15-91 and RMC 43-91 are not implementing rules but are new and additional tax measures which only Congress is empowered to impose. Besides, Petitioner posits, the said regulations are invalid due to the absence of publication. However, Respondent expounds that RMO No. 15-91 and RMC 43-91 are rulings which expressly revoke previous rulings implementing then Sections 116 and 157(u) of the Tax Code that pawnshops are not subject to 5% lending investor's tax. Such revocation is authorized under Section 246 of the Tax Code.

The sole issue subject of herein controversy is whether or not Petitioner, as a pawnshop operator is a lending investor under Section 157(u) of the Tax Code, as amended, to be liable for 5% deficiency percentage taxes in the sum of P2,108,335.19 for the year 1994.

We rule in favor of the Petitioner.

The disputed provisions of the Tax Code (1986) are hereunder quoted:

> **Sec. 157. Words and Phrases defined.** - xxx
>
> (u) *"Lending investor" includes all persons who make a practice of lending money for themselves or others at interest.*
>
> **Sec. 161. Fixed Taxes.** - xxx
>
> **(3) Other fixed taxes.** - xxx
>
> (dd) *Lending investors -*
>
> 1. *In chartered cities and first class municipalities, one thousand pesos.*
>
> 2. *In second and third class municipalities, five hundred pesos;*
>
> 3. *In fourth and fifth class municipalities and municipal districts, two hundred fifty pesos:* **Provided,** *That lending investors who do business as such in more than one province shall pay a tax of one thousand pesos.*

XXX XXX XXX

(ff) *Pawnshops, one thousand pesos.*

XXX XXX XXX

Sec. 175. Percentage tax on dealers in securities, lending investors. - *Dealers in securities shall pay a tax equivalent to six (6%) per cent of their gross income. Lending investors shall pay a tax equivalent to five (5%) per cent of their gross income.* (Formerly Section 116.)

Pertinent provisions of Presidential Decree 114 (Pawnshop Regulatory Act) are likewise cited, to wit:

Sec. 3. ***Definitions.*** - As used in this Decree, unless the context otherwise requires, the following terms shall have the following meanings:

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

XXX XXX XXX

Sec. 10. ***Rates of interest.*** - No pawnshop shall directly or indirectly stipulate, charge, demand, take or receive any higher rate or greater sum or value for any loan or forbearance than the rate allowed by the Usury Law for such transactions. xxx

Based on the above proviso, it would appear that the position of Respondent that pawnshops are lending investors is well grounded, inasmuch as the principal business activity of the pawnshop is lending money at interest. The acceptance of a pawn of personal property as security for the loan is merely incidental thereto.

That is why, relying on his authority under Sections 245 and 246 of the Tax Code, as amended, to make rulings or opinions in connection with the implementation of the provisions thereof and to revoke, modify or reverse the same, Respondent officially revoked BIR Ruling No. 06-90, VAT Ruling Nos. 067-90, 022-90 which exempted pawnshops from the 5% lending investor's tax by issuing RMO No. 15-91 and RMC No. 43-91, respectively quoted, *viz*:

> "A restudy of P.D. 114 shows that the principal activity of pawnshops is lending money at interest and incidentally accepting as `pawn' of personal property 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".
>
> This Circular subjects to the 5% lending investor's tax the gross income of pawnshops pursuant to Section 116 of the Tax Code, 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 the taxpayers if they are required to pay the tax on past transactions, and so as to give meaning to the express provisions of Section 246 of the Tax Code, pawnshop owners or operators shall become liable to the lending investor's tax on their gross income beginning January 1, 1991. Since the deadline for the filing of percentage tax 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.
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> "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, 1988 is hereby revoked."

However, We do not subscribe to the view of the Respondent. By clear legislative intent, We find pawnshops not subject to the 5% lending investor's tax provided under Section 116 of the Tax Code, as amended.

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

> The principle has been variously formulated: "As a general rule of statutory construction, the spirit or intention of a statute prevails over the letter thereof, and what is within the spirit of a statute is within the statute although it is not within the letter thereof, while that which is within the letter but not within the spirit of the statute is not within the statute." **[Tanada vs. Cuenco, 103 Phil. 1051, 1086 (1957), citing 82 C.J.S. 613]** The spirit, rather than the letter, of a statute determines the construction thereof and the court looks less to its words and more to its context, subject matter, consequence and effect. **[Manila Race Horse Trainers Assn., Inc. vs. De la Fuente, 88 Phil. 60 (1951); Go Chi vs. Go Cho, 96 Phil. 622 (1955)]** A statute must be read according to its spirit and intent, and where the legislative intent apparently conflicts with the letter of the law, the former prevails over the latter. **[Tanada vs. Cuenco, 103 Phil. 1051 (1957); Hidalgo vs. Hidalgo, G.R. No. 25326, May 29, 1970, 33 SCRA 105 (1970); Roa vs. Commissioner of Customs, 23 Phil. 315 (1912)]**

(All citations taken from the book: Statutory Construction by Agpalo, 3rd ed., 1995)

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 bolster 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.

In the same vein, We take note of the fact that there are additional provisions of the Tax Code, as amended, which treats of other persons or entities also engaged in the practice of lending money at interest differently from a lending investor. We are referring to banks, non-bank financial intermediaries and finance companies who are in the lending business earning interest too, yet, are classified separately and imposed a graduated type of rate of taxes (5%, 3%, 1% & 0%) under Sections 119 and 120 of said Code.

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

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

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

Even if We assume for the sake of argument that the stance of Respondent Commissioner has some support in fact and in law, Our pronouncements herein would still leave so much doubt when the same is put to the crucible of judicial scrutiny. In this light, the correct interpretation should still be in favor of the Petitioner. As was held in the case of **Commissioner of Internal Revenue vs. Fireman's Fund Insurance Company, 148 SCRA 315**, citing the case of **Manila Railroad Co. v. Collector of Customs, 52 Phil. 950 [1929]**), to wit:

> It is a general rule in the interpretation of statutes levying taxes or duties, that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed beyond what statutes expressly and clearly import.

Furthermore, Court of Appeals, in Commissioner of Internal Revenue versus Hon. Andres B. Reyes, Jr., et al., CA-G.R. SP No. 28824, December 23, 1993, held in this wise:

> After a careful review of the petition and all its annexes, and considering the private respondents' comment filed thereto, We are unable to find merit in the petition for the following reasons:
>
> xxx xxx xxx
>
> THIRD. Revenue Circular Nos. 15-91 and 43-91 are not implementing rules but are new and additional tax measures which only Congress is empowered to impose. Section 245 of the Tax Code has limited or confined petitioner's power to issuing rules and regulation to implement or carry into effect the provision of the Code in the enforcement of taxes provided therein, and petitioner cannot impose additional taxes not provided therein.
>
> Under the Constitution, the power to tax is solely vested in Congress. In issuing subject Revenue Circulars imposing new taxes against pawnshop, petitioner arrogated unto himself legislative powers, with grave abuse of discretion and in excess of jurisdiction.
>
> FOURTH. 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 the 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 a (sic) 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 prescribed (sic).
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> xxx xxx xxx
>
> FIFTH. xxx

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It is crystal clear that petitioner was without any authority to issue said Revenue Circulars, thereby rendering them null and void.

WHEREFORE, in view of all the foregoing, the instant petition for review is hereby **GRANTED.** Revenue Memorandum Order No. 15-91 and Revenue Memorandum Circular No. 43-91, in so far as they classify pawnshops as lending investors subject to 5% lending investor's tax is hereby declared **NULL** and **VOID** for being contrary to law and the constitution. Accordingly, Assessment Notice No. 81-PT-13-94-97-6-73, dated June 13, 1997, is likewise, hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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