REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JEWEL PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6235

COMMISSIONER OF INTERNAL, REVENUE,
Respondents.

Promulgated:
AUG 20 2003

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DECISION

This is a petition for review which seeks to have Assessment Notice No. 81-vat-13-97-2000-6-118, covering the taxable year 1997, declared null and void.

The antecedent facts are as follows:

Petitioner is a corporation duly existing and organized under Philippine laws. It is engaged in the pawnshop business with principal place of business at M. Lhuillier Bldg., Benedicto Street, North Reclamation Area, Cebu City *(par. 1, Petition for Review).*

On July 4, 2000, petitioner received Assessment Notice No. 81-vat-13-97-2000-6-122 with demand letter dated June 28, 2000 from the Chief of the Assessment Division, Revenue Region No. 13, Cebu City *(par. 2, Petition for Review)*. However, records show that the Assessment Notice was numbered 81-vat-13-97-2000-6-118 issued on June 28, 2000 and covered the taxable year 1997 *(Annex A 3/3, Petition for Review, page 11, CTA Records)*.

Details of the Assessment as found in the Formal Demand Letter are as follows:

Gross Receipts subject to VAT (2nd, 3rd & 4th Qtrs.)	P 10,591,148.98
Output Tax Due	P 1,059,114.90
Less: Input tax claimed	26,400.70
VAT due	P 1,032,714.20
Less: VAT payments	7,352.96
Deficiency tax due	P 1,025,361.24
Add: 20% interest from 7-21-97 to 7-31-00	569,075.49
TOTAL AMOUNT DUE	P 1,594,436.73

(page 417, BIR Records; Annex "A 1/3, Petition for Review)

Moreover, in the "Details of Discrepancy", the following information was disclosed, to wit:

DETAILS OF DISCREPANCY

> Gross Income/Receipts Not Subjected to Value Added Tax – Verification disclosed that interest income on pledge loans and past due loans, service charge, gain on auction sale and liquidated damages on pawned articles were not subjected to 10% VAT. It must be emphasized, that beginning 1996, pawnshop operators became subject to 10% value-added tax pursuant to then Section 102(a) of the Tax Code, as amended by R.A. Nos. 7716 and 8421, as further amended by R.A. 8424.
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> *(page 416, BIR Records; Annex "A 2/3. Petition for Review)*

On July 14, 2000, petitioner filed a "Motion for Reconsideration" dated July 11, 2000, questioning the legality and validity of the assessments in accordance with Section 228 of the Tax Code *(page 433, BIR Records; Annex B, Petition for Review).*

In the aforesaid motion, petitioner raised the following objections:

> First, The government has no legal right to impose the value-added tax since nowhere in Section 102(a) of the Tax Code, as amended by R.A. No. 7716, as further amended by R.A. No. 8241, did it state that pawnshop

businesses are subject to VAT. The rule on statutory construction of *Expressio Unius Est Exclusio Alterius* finds application in this case.

Second, Revenue Memorandum Circular No. 47-92 is void and unconstitutional in including pawnshops under the definition of lending investors. The act of the Commissioner in extending the definition of lending investor, so as to include pawnshop businesses, clearly amounted to amending our tax laws, which right is reserved exclusively to that of the Congress of the Philippines.

Petitioner further claimed that RMC 47-92 is an *utra vires* act since it has gone beyond the limits of the authority conferred to it by Congress. The circular was clearly an act of legislation and not of administration because the same imposes burdens or duty to the pawnshop business, which business was not expressly made subject to VAT under the Tax Code. Moreover, RMC 47-92 is void for violating the requirement of due process. Considering that the issuance is of general application, publication is necessary.

Third, The provision of Section 102(A) of the Tax Code, as amended by R.A. No. 7716 and R.A. No. 8241, merely transferred the provision on lending investors under the Percentage Tax Section of the old Code to the VAT Section of the amended code. Petitioner asserted that the legislative intent was merely to subject to VAT, instead of percentage tax, all lending investors. It clearly shows that Congress had no intention to subject to VAT pawnshop businesses because if so intended, pawnshop businesses should have been included in the enumeration of businesses subject to VAT under Section 102(a) of the Tax Code.

Finally, The sale of "rematados" (expired pawned items) is not a taxable pawnshop business because the pawnshops are not the legal owners of said "rematados", but the pawners, pursuant to Article 2088 of the Civil Code which provides, viz:

> "The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void."

As such, the transaction involving auction sale is a tax against the pawners pursuant to Section 106(a) of the Tax Code, to wit:

> "There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in

money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor."

For failure on the part of respondent to act on petitioner's motion for reconsideration, the instant petition for review was filed through registered mail on February 8, 2001.

In his Answer, respondent raised the following special and affirmative defenses:

"4. Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration. Its services consist of lending money at interest on the security of personal property; and the interest is the fee, remuneration, or consideration for such services. Hence, it is engaged in the sale of services subject to value-added tax (VAT) under Section 102(a) of the Tax Code, as amended by R.A. 7716.

5. Under Section 102(a) of the Tax Code, as amended by R.A. 7716, the VAT is equivalent to 10% of the gross receipts derived from the sale or exchange of services.

6. Interest on pledge loans and past due loans and liquidated damages are part of petitioner's gross receipts subject to VAT.

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

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

The following issues were jointly stipulated by the parties, to wit:

1. Whether or not Pawnshop business is subject to Value Added Tax under Section 102(a) of the Tax Code.

2. Whether interest income is income from service or from forbearance of money.

3. Whether liquidated damages are income from services or a simple item of indemnification.

4. Whether pawnshop business is similar or akin to Lending Investor business.

5. Whether respondent is legally empowered to impose and charge Value Added Tax on the petitioner for the proceeds of the auction sale of pawned item.

6. Whether pawn ticket is subject to documentary stamp tax.

We rule to deny the petition.

The first and fourth issues will be jointly discussed as they are interrelated.

Petitioner insists that there is no basis for the imposition of VAT because there is no provision in the Tax Code of 1997 which subjects pawnshops to VAT.

Respondent, on his part, maintains that from the words of Section 102(a) [now Section 108(A)] of the Tax Code, the sale or exchange of services is subject to 10% VAT and the enumeration of persons performing services is not exclusive but merely intended to give examples of businesses subject to VAT on sale or exchange of services. Respondent further contends that assuming *arguendo* that the enumeration in Section 102(a) [now Section 108(A)] is exclusive, the services of pawnshops are similar to those of a lending investor.

Section 102(a) [now renumbered as Section 108(A)] of the Tax Code provides in pertinent part:

> **Section 102.** ***Value-added Tax on Sale of Services and Use or Lease of Properties.–***
>
> "(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from <u>the sale or exchange of services</u>, including the use or lease of properties.

The phrase **'sale or exchange of services'** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors: stock, real estate, commercial, customs and immigration brokers; lessors or property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking of goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension house, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cages, and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees except those under Section 119 of this Code: services of banks, non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.

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

From the foregoing, it is clear that the sale or exchange of services is subject to VAT. The phrase "sale or exchange of services" encompasses the performance of all kinds of services for others for a fee, remuneration or consideration. The enumeration of persons performing services for a fee, such as, construction and services contractors, stock, real estate, commercial, customs and immigration brokers, etc., is merely intended to give examples of businesses performing services for a fee that are subject to VAT. The enumeration is not exclusive, which means that other persons performing services for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT. As held in **Gomez vs. Ventura, (54 Phil. 726)**:

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

The said Section 102(a) [now 108(A)] does not limit its application to those enumerated therein because the law speaks of "al kinds of services." To limit its application to the enumeration would contradict the very clear meaning of the phrase "all kinds of services". The phrase "including" should be construed merely as an enlargement and not of limitation.

> "The intention of an act will prevail over the literal sense of its terms. Thus, limited words in one part of an act may be expanded by general words in another part, if the general words more nearly express the legislative intent.
>
> A term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction than where the definition declares what a term 'means'. Thus, it has been said that 'the word 'includes' is usually a term of enlargement, and not of limitation... It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated..." Sutherland, *Statutory Construction*, 4th Ed., Vol. 2A, p. 82, Sec. 47.07 citing United States Argosy Ltd. v. Hennigan, 404 F2d 14 (CA 5th, 1968); See United States v. Gertz, 249 F2d 662 (CA 9th, 1957); Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 US 95, 86 L Ed 65, 62 S Ct1 (1941). (Emphasis supplied.)

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

> The terms "includes" and "including" when used in the Code are not deemed to exclude items otherwise within the meaning of the term defined. Thus, where Section 1(e) applies to the taxable income of estates "including" and thereafter lists four types of income from trusts or estates that are taxable, other types of estates may also be subject to taxation under Section 1(e). To hold differently would, in effect, substitute the term "limited to" for "including". [Mertens, *Law of Federal Income Taxation*, 1995 Ed., Section 3.37, Chap. 3, pp. 55-56, citing *In re Joplin, Jr.*, 882 F2d 1507 (CA10 1989), applying IRC & 7701(c)].

In the cases of ***Genato Commercial Corporation vs. The Court of Tax Appeals, et al.***, *104 Phil. 615* and ***Philippine American Drug Co. vs. Collector of Internal Revenue and Court of Tax Appeals***, *106 Phil. 161*, general words were harmonized with specific words found in the statute in question so as not to limit coverage of the taxing statute. In determining that the bank charge in question formed part of the charges enumerated in Art. 183-(B) of the then Tax Code, the Supreme Court held:

> "As may be seen, an importer is required to pay in advance the necessary percentage tax on the articles imported "based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges." In other words, the law requires that it be included in the assessment not only the import invoice value of the merchandise, which includes freight, postage, insurance, commission and customs duty, but all other similar charges which would necessarily increase the landed cost of the merchandise imported, which, in our opinion, should include the difference of Php 0.15 paid by petitioner to a local bank in the purchase of foreign exchange to carry out the importation. Indeed, the intention of Congress in enacting the above-quoted provision is to include in the assessment *all charges, whether specified or otherwise*, which an importer has to pay to complete his importation.
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> Invoking the rule of *ejusdem generis* which provides that "where, in a statute, general words follow a designation of a particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically enumerated," petitioner contends that the difference of Php 0.15 which it paid to a local

> bank in the purchase of foreign exchange to cover the importations in question cannot be included in the assessment for the purpose of determining the advance sales tax because they are not similar to the charges specifically enumerated in the law.
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> With this we disagree, for it cannot be denied that the intention of the law is to include *all charges* that may be paid by the importer to bring the importation into the country. In other words, all items of expense that may be incurred by the importer in bringing the importation into the country and which would necessarily increase the landed cost must be deemed included in the phrase "all similar charges" mentioned in the law. The doctrine of *ejusdem generis* is but a rule of construction adopted as an aid to ascertain and give effect to the legislative intent when that intent is uncertain or ambiguous, but the same should not be given such wide application that would operate to defeat the purpose of the law. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (State vs. Prather, 21 LRA 23, 25)."

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

Furthermore, Section 105 of the 1997 Tax Code provides:

> "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."

Inasmuch as pawnshops are engaged in the sale of services for a fee, remuneration or consideration, they are subject to VAT under Section 108(A) of the Tax Code, as amended. This conclusion finds support in recent decisions laid down by the Court of Appeals (***Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.***, *C.A. G.R. SP No.59282, March 23, 2001 and* ***Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc.***, *C.A. G.R. SP No. 59401, September 30, 2002),* the latest of which is the case of ***Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.***, *C.A. G.R. SP No. 68180, promulgated on February 10, 2003,* where the Court of Appeals categorically ruled that pawnshops are subject to the 10% VAT imposed under Section 108 (A) of R.A. 8424, thus:

> "A value-added tax 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.
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> In the case at bar, it has been the contention of respondent Agencia Exquisite of Bohol, Inc. that the business of a pawnshop is not similar to that of a lending investor. A pawnshop, according to respondent is principally engaged in the business of delivering money to another, secured by personal property, upon the condition that the latter shall pay the former, otherwise, the thing pawned shall be sold for the payment of the principal obligation. Hence, a pawnshop operator engages in a pledge transaction.
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> We are not convinced. The business of pawnshops are akin to that of lending investors. Respondent itself admitted that a lending investor is a person who makes a practice of lending money for themselves or others at interest. It seems that respondent forgotten that the business of a pawnshop is also to lend money for others at interest. The difference between lending investors and pawnshops lies only on the security given, that is, a lending investor may require both real and personal property as security for the loan; whereas a pawnshop can require only personal property as security for the loan. But in the end, a lending investor and a pawnshop both engage in the business of lending money for others at interest. Accordingly, a lending investor and a pawnshop are both subject to VAT, pursuant to the provision of the National Internal Revenue Code of 1997 which provides that "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 x x x lending investors x x x."
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> Even assuming *arguendo* that we do not classify pawnshops as lending investors, still pawnshops are subject to the 10% VAT imposed under Section 108(A) of R.A. 8424. Pawnshops refer to persons or entities engaged in the business of lending money on personal property delivered as

security for loans. 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 which the former obtained from the latter are in the form of remuneration or consideration, for without such personal properties, pawnshops will not extend any loan to a borrower. Furthermore, the payment of interest imposed on a borrower by a pawnshop is equivalent to a fee in exchange of the service provided by the pawnshop in lending money to such borrower. Thus, the phrase "***all kinds of services***" as stated in the second paragraph of Section 108(A) of R.A. 8424 is broad enough to cover the kind of service, that is, lending money in consideration of personal property delivered as security, which is provided by pawnshops to their borrowers. And the enumeration of sale or exchange of services under Section 108(A) of R.A. 8424 does not limit nor exclude other kinds of services performed for a fee, remuneration or consideration. Rather, such enumeration even expanded the meaning of the phrase "***all kinds of services***".

Besides, pawnshops do not merely engage in the service of lending money to pawners. Rather, pawnshops also sells, at public auction, personal properties pawned to them, in the event that the pawner fails to redeem the pawn within ninety days from the date of maturity of the obligation, the pawnbroker may ***sell or otherwise dispose*** of any article taken or received by him in pawn. Thus, by selling properties, pawnshops shall be subject to VAT.

Finally, respondent Agencia Exquisite of Bohol, Inc. reiterates that it is claiming exclusion from the coverage of the value-added tax law and it is not claiming exemption from payment thereof. We are not persuaded. When a taxpayer claims exclusion from payment of the VAT, he is thereby claiming exemption from payment thereof. For what is the effect of exclusion from the VAT other than exemption from payment thereof? They have the same effect. That is, when a taxpayer claims exclusion or exemption from payment of the VAT, he is in effect claiming that he is not liable to pay a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services.

It is settled that tax exemptions should be strictly construed against those claiming to be qualified thereto. Any exemption from the payment of a tax must be clearly stated in the language of the law. Pawnshops are not clearly stated in the National Internal Revenue Code of 1997 to be exempted from payment of the VAT. Hence, pawnshops shall be liable to pay ten percent (10%) of their gross receipts derived from sale or exchange of services as value-added tax."

It bears stressing that Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulation Act", defines a pawnshop as follows:

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

Judicial notice may be taken of the fact that the principal activity of pawnshops is lending money at interest on the security of personal property. The act of lending money at interest constitutes the performance of a service for a fee, remuneration or consideration for such service. In other words, the liability of pawnshop operators to pay the VAT no longer depends on the classification of their business but on the services they rendered. As a consequence thereof, rulings or decisions declaring that pawnshops are not lending investors have lost their bearing for as long as pawnshops are engaged in the sale of services like lending money on the security of personal property. Hence, petitioner cannot escape liability to pay the 10% VAT under Section 102(A) [now Section 108(A)] of the Tax Code.

Transactions which are exempt from VAT are enumerated under Section 103 [now Section 109] of the Tax Code, as amended by R.A. No. 7716. Pawnshop transactions are not among the exempt transactions. Neither are there any express provisions of law exempting pawnshops from VAT. Since the transactions of pawnshops are not among those enumerated in Section 103 [now Section 109] of the Tax Code or any other express provision of law as VAT-exempt, the same are subject to VAT under Section 102(A) [now Section 108(A)]. In this regard, tax exemptions are strictly construed against the taxpayer. In the absence of any clear provision of law exempting pawnshops from VAT, our conclusion is that pawnshops are subject to VAT on their gross receipts since they are clearly engaged in the performance of services.

In the recent case of ***Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation*****, G.R. No. 125355, March 30, 2000,** the Supreme Court ruled that the taxpayer, not falling within the exemptions mentioned under Section 109 of the Tax Code, is subject to VAT, thus:

> "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
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> xxx xxx xxx
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> Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. <u>As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.</u>
>
> At any rate, it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, <u>any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom. In the case of VAT, Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT.</u>" (*Emphasis ours.*)

On the second, third and fifth issues, petitioner claims that the imposition of VAT is illegal because the VAT was also imposed on the interest on the pledge loans and on past due loans as well as on liquidated damages. According to petitioner, such an imposition is clearly without legal basis considering that interest is a forbearance of money and not income from services and the liquidated damages imposed are incidental to the above-mentioned forbearance.

Petitioner likewise contends that unlike ordinary sale of goods, auction sale is a sale conducted as mandated by law for and in behalf of the owner of the "rematados" and that as for the "rematados" in question, the same is still owned by the pawners and not the pawnshop. According to petitioner, this is so because of the express provision embodied under Article 2088 of the Civil Code of the Philippines, which has suppletory application to the law creating pawnshop, prohibiting *factum commissorium*, to wit:

> "The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void."

On the other hand, respondent argues that interest on pledge loans and past due loans, liquidated damages and proceeds from the auction sale of pawned items, being incidental to the pawnshops business, are all part of the gross receipts subject to the value-added tax.

In the case of Michel J. Lhuillier vs. Commissioner of Internal Revenue, CTA Case No. 6533, promulgated on May 16, 2003, the court had the occasion to rule on the issues, thus:

> "The court does not agree with the petitioner's view.
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> Section 108 of the Tax Code provides:
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> "The term '*gross receipts*' means <u>the total amount of money or its equivalent</u> representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and

> deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax." (*Underscoring supplied*)

On the basis of the above provision in the Tax Code, we believe that interest income, liquidated damages and gains from the sale of the rematados form part of the gross receipts of pawnshop business which are subject to value-added tax. All of these are payments which are actually or constructively received incidental to the pawnshop business and, therefore, within the contemplation of the law.

In our recently decided case, we have passed upon the same issue in this wise:

> "By the very nature of the pawnshop business, money is being lent secured on personal property. The interest on pledge loans and past due loans are not compensation for forbearance of money. The same is true with liquidated damages in case the pawner fails to pay the borrowed money on time. Said loan having been secured on personal property, the pawnshop operator does not suffer any damage if ever the pawner defaults in the payment of the borrowed money. This is because in the pawnshop business, the loaned amount is always very much lower than the actual worth of the personal property pawned.

As regards the sale of the pawned items, what is being taxed by the respondent is the gain on auction sale and not the auction sale *per se*. xxx" *(Kwik Loan Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6424, promulgated on April 21, 2003)*

The sixth issue stipulated by the parties is whether pawn ticket is subject to documentary stamp tax. It is to be noted that the present case involves no documentary stamp tax assessment. Nor was the issue raised by the petitioner in its Petition for Review. Thus, the court finds it unnecessary to resolve the same.

Lastly, petitioner's contention that respondent committed material error in the computation of the VAT cannot be given credence. Where petitioner failed to subject to VAT the amounts received in the operation of its pawnshop business, its gross receipts must be multiplied by 10%. The provision in Section 102(c) of the Tax Code applies when the VAT has been imposed.

WHEREFORE, the instant Petition for Review is hereby **DENIED**. Accordingly, petitioner is hereby **ORDERED** to **PAY** deficiency VAT assessment in the amount of P1,594,436.73, inclusive of 20% deficiency interest, plus 20% delinquency interest from July 28, 2001 until fully paid pursuant to Sections 248 and 249(B) of the Tax Code of 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

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

LOVELL R. BAUTISTA
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