REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TFS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6535

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 2 9 2004

x---x

DECISION

This case involves Assessment Notices issued by respondent against petitioner for alleged deficiency value added tax, deficiency expanded withholding tax and compromise penalty for the taxable year 1998 in the amounts of P11,905,696.32, P186,918.00 and P50,000.00, respectively.

Petitioner is a corporation duly organized and existing under Philippine laws, and engaged in the pawnshop business with principal address at 878 F Aurora Boulevard, Cubao, Quezon City.

Prior to the issuance of the subject final assessment notices, or on January 15, 2002, respondent, through Regional Director Danilo A. Duncano, Revenue Region No. 7, Quezon City, issued a Preliminary Assessment Notice dated January 7, 2002 assessing petitioner of alleged deficiency value added tax, expanded withholding tax and compromise penalty in the amounts of P11,764,108.74, inclusive of interest up to January 4, 2002, 183,898.00, and 25,000.00, respectively.

Thereafter, petitioner filed a letter-reply on January 29, 2002, questioning respondent's preliminary assessment notice for lack of basis. Respondent replied in a letter dated February 7, 2002, and averred that he had already issued the final assessment notices relating to the questioned preliminary assessment.

Respondent referred to the various assessment notices he issued bearing the same number 40316 dated January 25, 2002, with attached demand letters and details of discrepancies, details of which are shown below:

Value-added Tax

Tax Due	P6,379,950.40
Add: surcharge (25%)	1,594, 987.60
Interest: 20% from 1-26-99 to 2-25-02	3,930,758.32
Total Amount Payable	P11,905,696.32

Expanded Withholding Tax

Tax Due	P115,659.13
Add: surcharge (25%)	
Interest: 20% from 1-26-99 to 2-25-02	71,258.87
Total Amount Payable	P186,918.00

Compromise Penalty

Total Amount Payable	P50,000.00

On February 20, 2002, petitioner filed its protest letter dated February 19, 2002, assailing the foregoing final assessment notices for lack of legal and factual bases.

For failure on the part of respondent to act on the protest and after the lapse of the one hundred eighty (180) day period provided by law, petitioner filed its petition for review with this court on September 11, 2002.

Respondent's Answer was filed through registered mail on November 4, 2002, raising the following Special and Affirmative Defenses:

"7. The assessment for deficiency business and withholding taxes are valid and in accordance with law;

8. Assessments are prima facie presumed correct and made in good faith; the above assessments were determined from the deficiencies computed from the records of the petitioner; petitioner failed to submit documents to further support its claim;

9. The burden of proof is upon the petitioner to prove that the assessment issued by the respondent is indeed null and void.

10. All assessment and pre-assessment notices were issued and sent to the petitioner in accordance with well-established procedures."

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

1. Whether or not the assessments for deficiency VAT and expanded withholding tax for calendar year ending 1998 which were issued on January 25, 2002 have prescribed;

2. Whether or not petitioner as a duly registered pawnshop is subject to VAT;

3. Whether or not petitioner is liable for deficiency VAT in the amount of P11,905,696.32;

4. Whether or not petitioner is liable for deficiency expanded withholding tax in the amount of P186,918; and

5. Whether or not petitioner is liable for interest and penalties.

On September 24, 2003, petitioner filed a "Manifestation and Motion" and alleged therein that on July 18, 2003, it had offered to compromise and settle the expanded withholding tax assessment with the respondent Bureau. The Offer to Compromise was forwarded to the Legal Division of Revenue Region No. 7 on July 28, 2003, but is still pending with the Chief of the Legal Division for referral to the committee concerned. As a result thereof, petitioner prayed that the issue of the validity of the assessment for deficiency expanded withholding tax be withdrawn from the instant petition. Respondent had no objection to petitioner's motion. Hence, on November 4, 2003, the court granted petitioner's "Manifestation and Motion".

The legal issue, thus, left for the consideration of the court is whether or not pawnshops are subject to the value-added tax.

Petitioner claimed that the VAT assessment has no legal basis. Sales or exchanges of services subject to VAT mean the performance of services enumerated in Section 108(A) of the 1997 Tax Code, including those services similar thereto. According to petitioner, nowhere in Section 108(A) of the Code are pawnshops included as subject to VAT. Petitioner averred that the legislature in making the enumeration of the particular services covered by a taxing regulation is deemed to have excluded those not enumerated therein. It further pointed out that this is apparent in the catch-all proviso "and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties".

We do not subscribe to petitioner's contentions.

Pertinent provisions of the 1997 Tax Code are hereunder quoted:

"***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. xxx"

"***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 or property, whether personal or real; persons engaged in milling, lessors or distributors or cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshments parlors, cafes and other eating places, includingf 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. xxx" (Underscoring supplied)

This court has ruled in a number of cases that pawnshops are subject to the value-added tax. Pawnshops are engaged in the business of providing services and as provider of services, their gross receipts are subject to the value-added tax.

In the more recent case, ***Cebu Mabuhay Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6266, promulgated March 25, 2004***, adopting the conclusion reached in the case of ***A.L.L.Pawnshop, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6482, promulgated September 3, 2003***, this court has ruled:

> "Prescinding from the above law, any sale of services for others for a fee, remuneration or consideration is subject to 10% VAT. The phrase "sale of exchange of services" encompasses the performance of **all kinds of services** in the Philippines for others for a fee, remuneration or consideration. It includes the services enumerated therein and similar services regardless of whether or not the performance thereof calls for the exercise of physical or mental faculties.
>
> xxx xxx xxx
>
> From the plain language of the law the sale or exchange of services is subject to VAT and 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, remuneration or consideration, such as construction and service contractors, stock, real estate, commercial, customs and immigration brokers, etc., is merely to give examples of businesses performing services for a fee, remuneration or consideration that are subject to VAT. The enumeration is not exclusive, which means that other persons performing services for a fee, remuneration or consideration, who are not expressly mentioned in the enumeration, are also subject to VAT. In the case of **Gomez vs. Ventura, 54 Phil. 726**, it was ruled that:
>
>> "xxx The maxim *expressio unius est exclusion 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. <u>It does not apply when words are mentioned by way of example, or to remove doubts.</u> (See Cyc., 1122 xxx.)". (Underscoring ours)
>
> Section 108 (A) of the 1997 Tax Code does not limit its application to those enumerated therein because the law speaks of "all kinds of services". To limit its application to the enumeration would contradict the very clear meaning of the phrase "all kinds of services".
>
> In addition, 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 Ct 1 (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 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)].

xxx xxx xxx

Furthermore, Section 109 [formerly Section 103] of the Tax Code, as amended, enumerates the transactions that are exempt from VAT. Pawnshop transactions are not among the exempt transactions under the said section. Neither are there any express provisions of law exempting pawnshops from VAT. Since the transactions of pawnshops are not among those enumerated in Section 109 or any other express provision of law as VAT-exempt, it follows that the same are subject to VAT under Section 108(A)."

Petitioner further reasoned out that pawnshops are not lending investors nor are they engaged in services similar to lending investors, which are subject to VAT. It anchored it stance on the Supreme Court ruling in the case of ***Commissioner of Internal Revenue vs. Lhuillier Pawnshop, Inc., G.R. No. 130947, July 15, 2003.***

We find petitioner's assertions bereft of merit.

The cited Supreme Court ruling dealt with the issue on whether or not pawnshops are akin to lending investors for the purpose of computing the 5% percentage tax, which is not the same as the issue presented in the instant case. The issue in this case dwells on whether or not pawnshops are subject to the value-added tax pursuant to Section 108(A) of the 1997 Tax Code in relation to Section 105 of the same Code.

Bearing in mind that 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 1997 Tax Code. This pronouncement finds support in recent decisions laid down by the Court of Appeals where it categorically ruled that pawnshops are subject to the 10% VAT imposed under Section 108(A) of the 1997 Tax Code (***Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc. C.A. G.R. SP No. 59282, March 23, 2001; Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc. C.A. G.R. SP No. 59401, September 30, 2002; Commissioner of Internal Revenue vs. Agencia Exzquisite of Bohol, Inc. C.A.G.R. SP No. 68180, February 10, 2003, Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc. C.A. G.R. SP No. 70319, May 13, 2003; Commissioner of Internal Revenue vs. Prime Asia Pawn & Jewelry Shop, Incorporated, C.A. G.R. SP No. 70318, November 6, 2003***).

Even considering that pawnshops are not classified as lending investors, still pawnshops are subject to the 10% VAT imposed under Section 108(A) of the 1997 Tax Code. 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 such loan. 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" stated in the second paragraph of Section 108(A) of the 1997 Tax Code is broad enough to cover such 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 the 1997 Tax Code 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 sell, at public auction, personal properties pawned to them, in the event that the pawner fails to redeem pawned articles within ninety days from the date of maturity of the obligation. Thus, by selling properties, pawnshops shall be subject to VAT.

Moreover, it must be pointed out that Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulations Act" defines a pawnshop as follows:

> "Pawnshop shall refer to a person or entity engaged in the business of lending money or 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 an 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, any allegation that pawnshops are not lending investors has lost its bearing. For as long as pawnshops are engaged in lending money on the security of personal property, they are still within the ambit of Section 108(A) of the 1997 Tax Code. Petitioner, being engaged in the pawnshop business, is undoubtedly engaged in the sale of services like lending money. Hence, it cannot escape liability to pay the VAT under Section 108(A) of the 1997 Tax Code.

Well settled is the rule that tax exemptions are strictly construed against the taxpayer ***(Cyanamid Phils., Inc. vs. Court of Appeals, 322 SCRA 639)***. In the absence of any clear provision of law exempting pawnshops from VAT, it is our conclusion that pawnshops are subject to VAT on their gross receipts considering that they are clearly engaged in the performance of services for a fee, remuneration or consideration.

In the 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. The High Tribunal held:

> "Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the performance of all kinds of services for others for a fee, remuneration or consideration." Xxx
>
> xxx xxx xxx
>
> 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>" (Underscoring supplied)

Prescinding from the foregoing, pawnshops are subject to the VAT, and as such, petitioner is required to file the corresponding VAT returns and pay the VAT for the taxable year 1998. Petitioner's failure to file the corresponding VAT returns within the prescribed period gave respondent the right to assess petitioner for deficiency VAT within ten (10) years from date of discovery as prescribed under Section 222 of the Tax Code. Hence, the issuance of Assessment Notice No. 40316 representing petitioner's value-added tax on January 25, 2002, is not yet time-barred.

WHEREFORE, Assessment Notice No. 40316 for deficiency value-added tax issued by respondent against petitioner is hereby upheld. Accordingly, petitioner is **ORDERED** to **PAY** the respondent the amount of P11,905,696.32 representing deficiency value-added tax for the year 1998, inclusive of 25% surcharge and 20%

deficiency interest, plus 20% delinquency interest from February 25, 2002 until full payment thereof pursuant to Sections 248 and 249 (B) of the 1997 Tax Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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 Justice