REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EXQUISITE PAWNSHOP & JEWELRY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6319

JAIME B. SANTIAGO, in his capacity as Revenue Regional Director, REVENUE REGION No. 13 of the BUREAU OF INTERNAL REVENUE and THE COMMISSIONER OF INTERNAL REVENUE,
Respondents.

Promulgated:

APR 04 2002

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DECISION

The instant petition seeks for the declaration of nullity of DA-297-97 (herein referred to by petitioner as the September 1, 1997 unnumbered Revenue Memorandum) issued by the then OIC, Assistant Commissioner for Legal Service of the Bureau of Internal Revenue (BIR) Sixto S. Esquivas IV. Petitioner likewise prays that this Court declare as null and void Assessment Notice No. 80-VAT-13-97-2000-8-146 issued by the respondents against the petitioner on September 5, 2000 in the amount of P1,607,114.28, for alleged value-added tax (VAT) liability, inclusive of increments, for the year 1997.

The facts are not disputed.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is the owner and operator of Exquisite Pawnshop &

Jewelry, Inc., with address at A. del Rosario St., Mandaue City (par. 1, Joint Stipulation of Admitted Facts and Issue, p. 92 CTA Records).

On May 4, 1994, Republic Act (RA) No. 7716, otherwise known as The Expanded Value-Added Tax Law, was enacted, amending certain provisions of the National Internal Revenue Code (NIRC). Under the said Act, any person, who in the course of trade or business, sells, barters or exchanges goods, or properties, renders services and any person who imports goods shall be liable to the value-added tax (VAT) imposed in Section 100 to 102 of the said Code. On December 11, 1995 and December 9, 1995, Revenue Regulation Nos. 6-95 and 7-95, respectively, were issued to implement the provisions of R.A. No. 7716 (Annexes F and G, Petition for Review).

On January 1, 1997, R.A. No. 8241 took effect, further amending certain provisions of R.A. No. 7716. The said act, while still subjecting to VAT all kinds of services rendered in the Philippines for a fee, remuneration or consideration, made some additions to those transactions exempt from the VAT. The following day, January 2, 1997, Revenue Regulations No. 6-97 was issued to implement R.A. No. 8241 (Annex H, Petition for Review).

On September 1, 1997, Sixto S. Esquivas IV issued the questioned DA-297-97, subjecting pawnshop operators to the 10% value-added tax pursuant to Section 102 (a) of the Tax Code, as amended by RA No. 7716, and further amended by R.A. No. 8241, beginning 1996 (Annex I, Petition for Review).

On January 1, 1998, R.A. No. 8424, otherwise known as the Tax Reform Act of 1997, took effect, to which were incorporated all the aforementioned amendments.

Thus, on September 5, 2000, pursuant to Section 108 of the NIRC, as amended by RA No. 8424, and by virtue of the DA-297-97 issued by Sixto E. Esquivas IV, Regional Director Jaime B. Santiago sent herein petitioner a Formal Letter of Demand with Details of Discrepancies attached thereto and Assessment Notice No. 80-VAT-13-97-2000-8-146, demanding payment of the sum of P1,607,114.28, inclusive of interest, surcharge and compromise penalty (Annexes A, B and C, Petition for Review).

On October 11, 2000, petitioner filed with the Office of the Regional Director, BIR Regional Office No. 13, Cebu City, an administrative protest (Annex D, Petition for Review) on the following grounds:

1. There is no specific provision in either the Tax Code or the VAT law which expressly imposes on pawnshops the 10% VAT on its gross income.

2. Pawnshops are not engaged in the sale of goods, property or services in the course of its trade or business.

3. Revenue Memorandum dated September 1, 1997 issued by OIC Assistant Commissioner Sixto S. Esquivas IV, is NULL and VOID.

4. The September 1, 1997 Revenue Memorandum by OIC Sixto Esquivas violates the due process limitation in taxation sanctioned by the Constitution, and is therefore, unconstitutional.

Through a letter dated May 17, 2001 and received by counsel for the petitioner on May 29, 2001, respondent denied petitioner's protest.

On June 27, 2001, petitioner filed the present case through registered mail, raising the same legal arguments contained in its protest letter filed with the BIR on October 11, 2000, hereinbefore stated.

In his Answer filed on August 21, 2001, respondents claimed by way of Special and Affirmative Defenses that:

> "3. Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration. As such, its gross receipts derived from the sale of such services are subject to the 10% value-added tax imposed under Section 102(a) of the Tax Code, as amended by R.A. No. 7716.
>
> 4. The assessment was issued in accordance with law and regulations.
>
> 5. All presumptions are in favor of the correctness of tax assessments.
>
> 6. Petitioner has not shown that the collection of the tax may jeopardize the interest of the Government and/or its interest, as required under Section 11 of R.A. No. 1125, which would justify the suspension of said collection."

The sole issue we are tasked to resolve have been stipulated by the parties to be as follows: Whether or not a pawnshop is engaged in the sale of goods, property or services in the course of trade or business so as to be made liable for the payment of the 10% value added tax (p. 94, CTA Records).

Petitioner contends that under Section 108 of the Tax Reform Act of 1997, all the entities engaged in the sale of services liable to pay the VAT are enumerated, which include lending investors, banks, non-bank financial intermediaries and finance companies, and that pawnshops are not found in the enumeration. Thus, according to petitioner, following the principle of "Expressio Unius Est Exclusio Alterius", when one or more things of a class are expressly mentioned, then others of the same class not mentioned are necessarily excluded.

Petitioner goes on to argue that a pawnshop business is in reality a pledgee in a contract of pledge. Citing Article 2123 of the New Civil Code, petitioner asserts that a pawnshop is principally engaged in the business of delivering money to another who secures the loan with his personal property, upon the condition that the latter shall pay the former, otherwise the thing pawned shall be alienated for the payment of the principal obligation. Its operations allegedly do not involve a sale or exchange of services nor does it perform any kind of service for others for a fee, remuneration or consideration.

Furthermore, petitioner maintains that the loaning coverage of a pawnshop is quite small and it caters only to small borrowers. Additionally, pawnshops are regulated by the Pawnshop Regulatory Act.

Respondents, on their part, insist that under Section 108(A) of the Tax Code, the enumeration of persons performing services for a fee is merely intended to give examples of businesses subject to VAT on sale or exchange of services, hence, not exclusive. This means that other persons performing services for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT. Therefore, respondents conclude that since a pawnshop is engaged in the sale of services, it is subject to VAT under Section 108(A) of the Tax Code.

Respondents also argue that assuming that under Section 108 (A) of the Tax Code, the VAT is imposable only on services performed by persons or entities enumerated therein, the services of a pawnshop would fall under the phrase "similar services" because its services are similar to those of a lending investor.

For clarity, We quote the pertinent provisions of Section 108 (A) of the Tax Reform Act of 1997:

> "**SEC. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties.-*
>
> "(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
>
> "The phrase '*sale or exchange of services*' means the performance of **all kinds of services** in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, café's and other eating places, including clubs and caterers; dealers in securities; **lending investors**; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and **similar services** regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. (Emphasis supplied)

From the above, it is quite clear that the services of pawnshops are not mentioned in the enumeration provided for under the aforequoted section. However, respondents argue that the services of pawnshops are similar to those rendered by lending investors which, if warranted, would indeed subject the services rendered by Petitioner to value-added tax.

In this court's ruling in the case of **Trustworthy Pawnshop, Inc. versus Collector of Internal Revenue, CTA Case No. 5691 promulgated on March 7, 2000**, we first passed upon the issue in this manner, thus:

> "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 bolsters 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 subject 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."

Our conclusion finds support in the case of **Commissioner of Internal Revenue vs. Hon. Andres B. Reyes, Jr., et. al., CA-G.R. SP No. 28824 promulgated on December 23, 1993,** where the Court of Appeals categorically ruled that a pawnshop is not a lending investor, thus:

> "xxx 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 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 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 proscribed (**Froechlich and Kuttner vs. Collector of Customs, 18 Phil. 461**)."

Finding petitioner not subject to VAT, We, therefore find DA-297-97 or the alleged unnumbered Revenue Memorandum dated September 1, 1997, issued by OIC Assistant Commissioner Sixto Esquivas IV, as invalid and unenforceable. DA-297-97, which, to us, is more of a ruling rather than a memorandum as the same embodies opinions on queries from the Regional Director, does not have the force and effect of law. Although Courts may uphold administrative rulings, the same, however, must be in harmony with the provisions of the law. They cannot impose additional taxes.

As held in the aforementioned case of **Commissioner of Internal Revenue vs. Hon. Andres Reyes, Jr., et. al.:**

> "xxx Section 245 of the Tax Code has limited or confined petitioner's power to issuing rules and regulations to implement or carry into effect the provision of the Code in the enforcement of taxes 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."

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WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **GRANTED**. DA-297-97 issued by Assistant Commissioner Sixto S. Esquivas IV on September 1, 1997, which subjects pawnshop operators to the 10% VAT, is hereby declared **NULL** and **VOID. Accordingly**, Assessment Notice No. 80-VAT-13-97-2000-8-146 dated September 5, 2000 in the amount of P1,607,114.28 is hereby declared **CANCELLED, WITHDRAWN and WITH NO FORCE AND EFFECT**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

(Dissenting)
JUANITO C. CASTAÑEDA, JR.
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

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DISSENTING OPINION

The majority of my colleagues cancelled Assessment Notice No. 84-VAT-13-97-2000-8-146 issued against petitioner on the ground that pawnshop operators, not being lending investors, are not subject to VAT. I do not share this view which was taken mainly from the decision of the Court of Appeals entitled **Commissioner of Internal Revenue vs. Hon. Andres B. Reyes, Jr., et. al., CA-G.R. SP No. 28824, promulgated on December 23, 1993**.

With due respect to the majority opinion, I submit that pawnshops are subject to Value-Added Tax (VAT) for the following reasons:

1. Then Section 102(a) [now renumbered as Section 108(A)] of the Tax Code subjects to VAT the sale of all kinds of services in the Philippines for a fee, remuneration

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or consideration, including lending investors, services of banks, non-bank financial intermediaries and finance companies, and similar services. [Note: In the case of banks, non-bank financial intermediaries and finance companies, VAT imposition has been deferred to January 1, 2003 under Section 5 of RA 8424, as amended by RA 8761 and RA 9010.] Section 102(A) provides in pertinent part:

> "**SEC. 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 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; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension house, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes, and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees 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. x x x
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> x x x
>
> 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, the sale or exchange of services is subject to VAT. The phrase "sale or exchange of services" encompasses the performance of all kinds or services for a fee, remuneration or consideration.

The enumeration of persons performing services for a fee, such as, construction and service 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)**:

> "x x x 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) x x x." [Underscoring ours]

Section 102(A) [now 108(A)] 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". The phrase "including" should be construed merely as an enlargement and not of limitation.

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> "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.
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> 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. 24, p. 82, Sec. 47.08, citing United States. Argosy Ltd. v. Hannigan, 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). [Underscoring ours]

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

> "Includes" and "Including"
>
> 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 on 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).

Hence, in the cases of **Genato Commercial Corporation vs. The Court of Tax Appeals, 104 Phil. 615**, and **Philippine American Drug Co. vs. Collector of Internal Revenue, 106 Phil. 163**, 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 in the Genato case (cited in the *Philippine American Drug Co.* case) 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 0.015 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.
>
> 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, class or nature as those specifically enumerated," petitioner contends that the difference of Php 0.015 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 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 L.R.A. 23,25*). [Underscoring ours]

In this particular case, the law 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.

2. Since pawnshops are engaged in the sale of services, they are subject to VAT under Section 108 of the Tax Code.

Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulation Act" defines a pawnshop thus:

> "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. Hence, pawnshops are engaged in the sale of services subject to VAT under Section 108 of the Tax Code.

3. Moreover, the term "lending investor" as well as "similar services" in Section 108 of the Tax Code sufficiently encompasses pawnshop activities. Section 116 of the Tax Code (before amendment by Executive Order No. 273) defined "lending investor" in this manner:

"(u) Lending investors include all persons who make a practice of lending money for themselves or others at interest."

The definition of the term "pawnshop" under Section 3 of P.D. No. 114 is broad enough to fall within the coverage of "lending investors" and "similar services" even if one were to restrict the meaning of "all kinds of services" under Section 108 of the Tax Code. After all, the principal business activity of pawnshops is actually lending money at interest.

In the case of **Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., CA -G.R. SP. No. 59282, March 23, 2001**, the Court of Appeals ruled that pawnshops are subject to the then five percent (5%) lending investors' tax since they are considered to be lending investors. In determining that pawnshops are lending investors, the Court of Appeals reasoned as follows:

> "In support of its thesis that the Tax Court erred in holding that pawnshops are not subject to the lending investor's tax, the petitioner adverts to then Section 116 of the Tax Code, which provides that:
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> > "**SECTION 116**. 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."
>
> *vis-a- vis* then Section 157(u) of the Tax Code (before amendment by Executive Order No. 273) which defined "lending investors" in this manner:
>
> > "(u) Lending investors include all persons who make a practice of lending money for themselves or others at interest."
>
> Hence, the definition of the term "pawnshop" under Section 3 of Presidential Decree No. 114, (otherwise known as the "Pawnshop

Regulation Act" issued by President R. E. Marcos on 29 January 1973), thusly - -

> "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 pawnbrokergage."

is broad enough to encompass lending investors. Reason: Its principal business activity is actually lending money at interest: its accepting of pawned personal property as security for the loan is merely incidental to its main business activity. So much, in fact, is embodied in Revenue Memorandum Order No. 15-91, dated March 11, 1991, to wit:

> "A restudy of P.D. 114 shows that the principal activity of pawnshops is lending money at interest and incidentally accepting a 'pawn of personal 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."

It will be recalled that in the implementation of then Section 116 and Section 157(u) of the Tax Code, the Bureau of Internal Revenue had issued several rulings relative to the coverage of the pawnshops under the lending investor's tax. The first of these rulings was an unnumbered BIR Ruling bearing the date 2 March 1968, wherein it was held that "lending investors," as contemplated under then Section 194(u) of the Tax Code, do not comprehend persons engaged in pawnshop business. This rule was reiterated in, amongst other, BIR Ruling No. 135-82, dated 22 April 1982; BIR Ruling No. 001, dated 3 January 1983; and BIR Ruling No. 06-90 dated 23 January 1990.

Complementary to the above, March 11, 1991, herein petitioner issued RMO No. 15-91. This RMO No. 15-91 stated that, according to BIR Ruling No. 06-90, as well as VAT Ruling Nos. 067-90, 022-90, and 226-90, pawnshops are not subject to any business tax, that is, the value added tax, the lending investor's tax, or the percentage tax imposed on non-banking financial intermediary for the reasons therein set forth, amongst which, is that-

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> "Pawnshop are not subject to the 5% lending investor's tax under 116 of the Tax Code because, citing BIR Ruling dated March 2, 1968 and 135-82 dated April 22, 1982, lending investors, as contemplated under then Section 194(u) of the Tax Code, do not include persons engaged in pawnshop business."

Later, however, on May 27, 1991, the petitioner issued RMC No. 43-91 clarifying, amongst other, RMO No. 15-91, in this tenor:

> "This Circular subjects to the 5% lending investor's tax the gross income of pawnshops pursuant to Section 116 of the Tax Code, and 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 taxpayers if they are required to pay the tax on past transactions, and so as to give meaning to the express provisions of Section246 of the Tax Code, pawnshops owners or operators shall becme liable to the lending investor's tax on their gross income beginning January 1, 1991. Since the deadline for the filing of percentage tax return (BIR Form No. 2529A-O) and the payment of the 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, 198 is hereby revoked."

In other words, RMO No. 15091 and RMC No. 43-91, both expressly revoked previous BIR rulings to the effect that pawnshops are not subject to the five percent lending investor's tax. More importantly, RMC No. 43-91 revoked BIR Ruling No. 325-88, dated July 13, 1988, which held that a pawnshop ticket is not subject to the documentary stamp tax. And, this revocation of prior or previous, rulings is allowed under Section 246 of the Tax Code, to wit:

> "**SEC. 246**. *Non-retroactivity of rulings.* – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the receding

> section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application xxx."

Undoubtedly, petitioner's later/subsequent stance finds support in *Hilado v. Collector of Internal Revenue, 100 Phil. 288*, which effectively held that the incumbent is not bound by the previous ruling or opinion of his predecessor, if he is satisfied that a different construction of the statute should be adopted.

With such course of action, we are in full accord. For, as the Supreme Court itself held in *Que v. Intermediate Appellate Court, 169 SCRA 137*, even judicial decisions are by no means immutable or infallible. Which is as it should be. For time works changes and brings into existence new conditions and purposes. And the law as an expression of social needs, whilst it is desirable that it should b e stable, yet it cannot and must not stand still.

It should ever be borne in mind that taxes are what we pay for civilized society: taxes, indeed, are the lifeblood of the nation. Not much unlike an army, which, to borrow the picturesque prose of Napoleon, marches on its stomach, the prosperity and economic well-being of the country rises or falls on the effectiveness – or lack of its – of the tax collection efforts of the Government. Which explains why, as a matter of policy, the law frowns against exemptions in taxes. So much so that, statutes granting tax exemptions have been held to be *strictissimi juris* against taxpayer, and liberally in favor of the taxing authority, viz., the State, or its instrumentality or agencies. About the only exemption to this rule (that the tax exemption may be withdrawn at the pleasure of the taxing authority) is where the exemption was granted to private parties based on material considerations of a mutual nature, in which event it become contractual, and is thus protected by the non-impairment clause of the Constitution.

Indeed it is the constant teaching of unrelenting case law that rules for the allowance of tax creditors, as well as claims for tax exemptions, must be **expressly granted in a statute**, and couched or stated in language too plain to be misunderstood or mistaken. Here, respondent pawnshop cannot point to any specific provision in P.D. 114, from which it draws its breath of life, that explicitly exempts it from the coverage of RMO No. 15-91 and RMC No. 43-91.

In sum, since the respondent in the case at bench is a pawnshop operator, it must follow, as night follows day, in the elegant poetry of Shakespeare – that it is subject to the five percent lending investor's tax hence, liable for the amount of Pesos: One Hundred Six Thousand Five Hundred Thirty Eight and Fifty-nine Centavos (P106,538.59), by way of deficiency percentage tax for the year 1995."

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4. As previously cited, then Section 102(A) [now Section 108(A)] of the Tax Code provides: "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."

All interest income, liquidated damages and gains from auction sale of pawned items actually or constructively received by petitioner, *having been derived as an intrinsic part of the pawnshop business*, form part of the gross receipts of pawnshops subject to VAT. In this regard, the BIR subjected to VAT the "gain on auction sale," *not* the proceeds thereof. [Please see "Details of Discrepancy" attached to BIR Formal Letter of Demand, Annex A2/3, Petition for Review]

5. Section 103 [now Section 109] of the Tax Code, as amended by RA 7716, enumerates the transactions that are exempt from VAT. 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 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). 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 s [illegible] they are clearly engaged in the performance of services.

In the recent case of **Commissioner of Interna [illegible] enue vs. Court of Appeals and Commonwealth Management and Services C [illegible] ration, G.R. No. 125355, promulgated on March 30, 2001**, the Supreme Court r [illegible] that the taxpayer, not falling within the exemptions mentioned under Section 109 [f [illegible] ly 103] of the Tax Code, is subject to VAT. The high tribunal held:

> Section 108 of the National Internal R [illegible] ue Code of 1997 defines the phrase "sale of services" as the "per [illegible] ance of all kinds of services for others for a fee, remuneration or c [illegible] eration." x x x
>
> x x x
>
> Hence, it is immaterial whether the p [illegible] ry purpose of a corporation indicates that it receives payments f [illegible] vices rendered to its affiliates on a reimbursement-on-cost basis [illegible] vithout realizing profit, for purposes of determining liability [illegible] VAT on services rendered. As long as the entity provides [illegible] rvice for a fee, remuneration or consideration, then the service [illegible] ered is subject to VAT.
>
> At any rate, it is a rule that because tax [illegible] the lifeblood of the nation, statutes that allow exemptions are co [illegible] l strictly against the grantee and liberally in favor of the governm [illegible]. Otherwise stated, any exemption from the payment of a tax must l [illegible] learly stated in the language of the law; it cannot be merely impli [illegible] erefrom. In the case of VAT, Section 109, Republic Act 8424 c [illegible] y enumerates the transactions exempted from VAT. *Commission [illegible] nternal Revenue vs. Court of Appeals and Commonwealth Man [illegible] nt and Services Corporation, G.R. No. 125355, March 30, 2001.* [illegible] erscoring ours]

WHEREFORE, I register my dissent to the majority opinion and vote to **ORDER** the petitioner to pay the assessed deficiency VAT in the amount of P1,587,114.28 inclusive of surcharge and deficiency interest plus 20% delinquency interest computed from October 5, 2000 until fully paid pursuant to Section 249(c)(3) [now Section 249(C)(3)] of the Tax Code.

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Judge