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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CEBU ROSVER PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6154

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 16 2001

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DECISION

This is a Petition for Review filed by the Petitioner on August 18, 2000 seeking to set aside the ruling of the Regional Director of the Bureau of Internal Revenue, Revenue Region No. 13, Central Visayas, Cebu City which sustained the assessment in the total amount P640,313.42 issued by the said regional office for alleged Value Added Tax deficiency for taxable year 1996.

The facts of the case as jointly stipulated by the parties are summarized as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with main office at 4th Don Gorres-Laceson Bldg., Colon St., Cebu City. Petitioner corporation operates Ros-Ver Pawnshops.

On April 14, 1998, Audit Notice No. OCN 2AN000000164 was issued by the Respondent to his Revenue Officers, Elizabeth Concha and Lotie Blando for the purpose of conducting an examination of the books of account and other records of the Petitioner covering taxable period 1996.

As a result of the said examination, Petitioner conformed and was allegedly made to execute an Agreement form. On the basis of this Agreement form, Petitioner allegedly paid a total amount of P23,488.94, broken down as follows:

a)	Deficiency Income Tax	P19,064.18
b)	Deficiency Registration Fee	P 4,424.76
	TOTAL	P23,488.94

Subsequently, on June 21, 1999 the Respondent issued to Petitioner a preliminary assessment notice dated May 05, 1999 informing the latter of its alleged Deficiency Percentage Tax in the amount of P208,467.50.

On March 10, 2000, Petitioner received a copy of a Post Reporting Notice issued by the Respondent informing the Petitioner of its alleged deficiency value added tax in the amount of P627,350.02, inclusive of surcharge, interest and penalty.

On March 24, 2000, Petitioner filed its letter protest to the aforesaid Post Reporting Assessment.

On April 18, 2000, Respondent issued another Preliminary Assessment Notice assessing Petitioner of alleged deficiency value added taxes for the year 1996 in the total amount of P632,929.22.

Finally, on May 30, 2000, an Assessment Notice was received by the Petitioner informing it of its alleged value added tax liability in the amount of P640,313.42, inclusive of surcharge, interest and penalty.

On June 6, 2000, Petitioner filed its letter protest with the Respondent incorporating and bringing to the attention of the Regional Director the March 20, 2000 protest to the Post Reporting Notice dated March 9, 2000.

From the denial of the Petitioner's request for reconsideration of its assessed 1996 VAT liability, Petitioner filed the instant Petition for Review with this Court on August 18, 2000.

In its Petition for Review, Petitioner alleged in the main that there is no provision in the Revised Internal Revenue Code nor in the successive amendatory laws which include pawnshops as among those liable to pay value added tax. Thus, according to the Petitioner there is no valid and legal basis for the Respondent to assess and collect the 10% value added tax from pawnshops and/or pawnshop operators.

Moreover, Petitioner asseverates that Revenue Memorandum Order No. 15-91 and Revenue Memorandum Circular No. 43-91 are null and void for expanding the provisions of the Tax Code when they include pawnshops as among those that are subject to value-added tax.

The Respondent, in his Answer filed on September 26, 2000, interposed the following Special and Affirmative Defenses, thus:

> "8. Under Section 102 (a) of the Tax Code, as amended by R.A. No. 7716, the sale of services rendered by lending investors and services similar thereto is subject to 10% VAT on gross receipts derived from said sale. Section 4.102-1 of Revenue Regulations No. 7-95 defines a "lending investor" as including "all persons, other than banks, non-bank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions, who make a practice of lending money for themselves or others at interest." Since the services of pawnshops are similar to those of lending investors, the sale of said services is subject to 10% VAT.
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> 9. The assessment was issued in accordance with law and regulations.

10. In "Commissioner of Internal Revenue v. Antonio Tuason, Inc.", 173 SCRA 397 (1989) the Supreme Court declared, viz:

> "All presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue, and the taxpayer must prove the contrary."

11. In "Molina vs. Rafferty," 37 Phil. 546 (February 1, 1918), the Supreme Court affirmed the decision in Farrington v. Tennessee, 95 US 679, 686 (1877), which is quoted hereunder, viz:

> "When exemption from taxation is claimed, it must be shown indubitably to exist. The presumption is always against any surrender of the taxing power."

12. The Court of Appeals' ruling in "Commissioner of Internal Revenue v. Hon. Andres Reyes, et al.," CA-G.R. SP. No. 28824, which declares that RMO No. 15-91 and RMC No. 43-91 are null and void for being a "taxation by implication," is still under appeal before the Supreme Court (GR No. 113459). As such, said ruling is not yet final and executory. Clearly, the questioned Revenue Memorandum Circular/Order are still in full force and effect.

13. Section 218 of the 1997 National Internal Revenue Code provides, viz:

> "Sec. 218. Injunction not Available to Restrain Collection. – No court shall have the authority to grant an injunction to restrain the collection of any internal revenue tax, fee or charge imposed by this Code."

14. The Supreme Court in "Obillos Jr. vs. Commissioner of Internal Revenue," 139 SCRA 441, ruled that:

> "Taxes being the chief source of revenue for the government to keep it running must be paid immediately and without delay." (Collector of Internal Revenue vs. Yuseco, 3 SCRA 313)

15. Section 11 of Republic Act No. 1125 provides, viz:

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> "Sec. 11. Who may appeal; effect of appeal. – xxx xxx xxx No appeal from the decision of the Commissioner of Internal Revenue xxx shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. xxx"

On April 10, 2001, after the parties have submitted their respective memorandum, this case was considered submitted for decision.

The vortex of the controversy lies on whether or not pawnshops are subject to the payment of the 10% value added tax.

We rule in the negative.

A careful reading of the disputed provisions of the Tax Code becomes necessary for the proper disposition of the issues, thus:

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

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

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

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

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

x x x x x x x x x

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

The aforequoted provisions would apparently bolster the theory of Respondent that pawnshops are indeed lending investors because the principal activity of the pawnshop is lending money at interest. This interpretation by the Respondent was officially declared in the now disputed RMO 15-91 and RMO 43-91, both hereinbelow quoted, thus:

RMO No. 15-91, March 11, 1991

"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 properties 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."

RMC No. 43-91, May 27, 1991

"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 Section 246 of the Tax Code, pawnshop owners or operators shall become liable to the lending investors 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.

Since pawnshops are considered as lending investors effective January 1, 1991, they also become subject to documentary stamp taxes prescribed in title VII of the Tax Code. BIR Ruling No. 325-88 dated July 13, 1988 is hereby revoked."

Both RMO No. 15-91 and RMC No. 43-91 had the effect of revoking BIR Ruling Nos. 6-90 and VAT Ruling Nos. 22-90 and 67-90 which exempted pawnshops from the 5% lending investor's tax.

We do not however agree with the Respondent and find that pawnshops are not subject to the 5% lending investor's tax and this has been well-settled by this Court in the case of **Agencia Exquisite of Bohol, CTA Case No. 5990 promulgated on March 14, 2001 and Trustworthy Pawnshop, Inc. vs. Collector of Internal Revenue, CTA Case No. 5691 promulgated on March 7, 2000**.

In **CTA Case No. 5691 entitled Trustworthy Pawnshop, Inc. vs. Collector of Internal Revenue promulgated on March 7, 2000**, this Court ruled:

"If we go by the contention that pawnshops are lending investors, then Congress would not have been mistaken in treating the two separately under paragraphs (*dd*) and (*ff*) of Section 161 of the Tax Code, as amended, *supra*. Logic simply dictates that if by prior definition under Section 157 (u) of said Code pawnshops and lending investors are of the same class, then there is no rational basis for differentiating them under one heading later, except for the fact that they are dissimilar as tax subjects.

Further analyzing said Section 161, *supra*, it appears that lending investors were imposed a graduated type of fixed taxes depending on the class of the city or municipality involved while pawnshops were differently levied a flat amount of tax. This particular observation bolster Our position that pawnshops are not similarly situated as lending investors. Congress would not have intended otherwise, because the act of segregating and imposing upon them unequal amount of taxes would transgress the fundamental rule on taxation on uniformity or equality enshrined under par. 1, Section 28 of Article VI of our Constitution. The rule requires that all 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 Phi. 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."

The Court of Appeals also had the occasion to rule on the validity of RMO No. 15-91 and RMC No. 43-91 in the case of **Commissioner of Internal Revenue vs. Hon. Andres B. Reyes, Jr., et. al., CA-GR SP No. 28824** when it ruled, thus:

"xxx. Revenue Circular Nos. 15-91 and 43-91 are not implementing rules but are new and additional measures which only congress is empowered to impose. Section 245 of the Tax Code has limited or confined petitioner's power to issuing rules and 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 pawnshops, petitioner arrogated unto himself legislative powers, with grave abuse of discretion and in excess of jurisdiction."

We do not see any valid or cogent reason to depart from the wisdom of the aforequoted decision of the Court of Appeals insofar as it declares the invalidity of RMO No. 15-91 and RMC No. 43-91 in the light of clear constitutional provisions. And since the deficiency VAT assessment issued against the Petitioner is hinged on Respondent's conclusion that the former is a lending investor thus also subject to VAT, this Court's contrary ruling as discussed above, effectively strikes down the said assessment as being null and void for lack of legal basis.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **GRANTED**. Revenue Memorandum Circular No. 43-91 and Revenue Memorandum Order No. 15-91, classifying pawnshops as lending investors, are hereby declared **NULL** and **VOID**. Accordingly, Assessment Notice No. 81-VAT-13-96-2000-5-104 is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
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