

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ANTAM PAWNSHOP CORPORATION,
Petitioner,

EB No. 131
(C.T.A. CASE NO. 7069)

Members:

ACOSTA, P.

CASTAÑEDA JR.,

BAUTISTA

JR.

CASANOVA, and

PALANCA-ENRIQUEZ, II:

Promulgated

-VERSUS-

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

FEB 10 2006



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DECISION

CASANOVA, J.

This is a Petition for Review before the Court of Tax Appeals En Banc filed under Republic Act No. 9282, seeking to review the Decision of the Second Division of the Court of Tax Appeals promulgated on June 21, 2005, and the Resolution dated October 7, 2005, partially granting Petitioner's Petition for Review and denying Petitioner's Motion for Reconsideration for lack of merit, respectively.

The undisputed facts as culled from the records of the case are briefly narrated as follows:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines engaged in the pawnshop business, with principal business address at 1658 España Street, Sampaloc, Manila.

The listing provided for in Section 108 (A) is intended merely to give examples of persons or businesses performing services for a fee, remuneration or consideration. 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. 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 including, though not specifically enumerated..." (*Sutherland, Statutory Construction*, 4th Ed., Vol. 24, p. 82, Sec. 47.07 citing *United States Airways Ltd. v. Hennigan*, 404 F.2d 14 (CA 9th, 1968); See *United States v. Gertz*, 249 F.2d 662 (CA 9th, 1957); *Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 US 95, 66 L Ed 65, 62 S Ct (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". [*Mortens, Law of Federal Income Taxation*, 1995 Ed., Section 3.37, Chap. 3, pp. 53-56, citing *In re Toplin, Jr.*, 862 F.2d 1507 (CA10 1989), applying IRC § 7701(c)]."

Well settled is the jurisprudence that tax exemptions are strictly construed against the taxpayer (*Qyanamid Phils., Inc. vs. Court of Appeals*, 322 SCRA 639). In the absence of any clear provision of law exempting pawnshops from VAT, then, 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 sum, the Court *En Banc* finds no cogent justification to disturb the previous conclusion as spelled out in the Decision promulgated on June 21, 2005 and the Resolution dated October 27, 2005. What the instant petition asks is for the Court *En Banc* to view and appreciate the evidences in their perspective of things, which unfortunately, has already been considered and passed upon.

WHEREFORE, the instant Petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit.

SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENQUIRE
Associate Justice

