REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGENCIA EXQUISITE OF BOHOL, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5990

CRISPINO VALLEJOS, JR. 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:

MAR 14 2001

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DECISION

Assailed in this Petition for Review is the decision of the Respondent Bureau of Internal Revenue denying Petitioner's protest against an assessment for deficiency percentage tax in the amount of P66,373.49, for the year 1994.

The antecedent facts of the case which give rise to the controversy at bar are contained in the parties' Joint Stipulation of Facts:

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines and is the owner and operator of Agencia Exquisite of Bohol, Inc., located at M.H. del Pilar Street, Tagbilaran City, Bohol.

On March 11 and May 27, 1991, the then Commissioner of Internal Revenue issued Revenue Memorandum Order No. (RMO) 15-91 and Revenue Memorandum Circular No. (RMC) 43-91, respectively, subjecting all pawnshops to a five percent (5%) lending investors' tax. Pursuant to RMO No. 51-91 and RMC No. 43-91, Respondent Revenue Regional Director, Revenue Region No. 13, through its Assessment Division issued

Assessment Notice No. 84-PT-13-94-99-9-081 with attached Details of Discrepancy both dated 15 September 1999, directing Petitioner to pay the amount of Sixty Six Thousand Three Hundred Seventy Three Pesos & 49/100 (P66,373.49) representing the five percent (5%) lending investors' tax imposed on pawnshops, inclusive of interest and surcharge.

On October 15, 1999, Petitioner timely filed its Formal Administrative Protest with Respondent Revenue Regional Director against Assessment Notice No. 84-PT-13-94-99-9-081. The said tax protest however was denied in a Letter-Resolution dated November 12, 1999, a copy of which was received by Petitioner on November 25, 1999. On December 24, 1999, Petitioner filed this Petition for Review (see Joint Stipulation of Facts, pages 104 to 105, CTA Records).

On November 17, 2000, after the parties have submitted their respective Memorandum this case was considered submitted for decision.

The issue in this case is purely legal, i.e. whether or not Petitioner, as a pawnshop operator is a lending investor pursuant to Section 157(u) of the 1994 Tax Code, as amended, to be liable for deficiency percentage tax in the amount of P66,373.49.

In its Memorandum, Petitioner's primary bone of contention lies on the fact that pawnshops are not lending investors, hence, not subject to 5% percentage tax. In addition thereto, it maintains the view that RMO. No. 1591 and RMC No. 43-91 are not implementing rules but are new and additional tax measures which only Congress is empowered to enact.

Upon the other hand, Respondent asserts that the term "lending investor" under the Tax Code is broad enough to cover pawnshop operators since as defined by law, "lending investor" includes all persons who make a practice of lending money for themselves or others at interest. Thus, Respondent concludes that since the principal activity of a pawnshop is lending money at interest, it easily falls under the definition of "lending investor" and that Petitioner's acceptance of a pawn of personal property as security for the loan is merely incidental thereto. Equally important, as argued by the Respondent, is that RMO No. 15-91 and RMC No. 43-91 are rulings which expressly revoke previous rulings implementing then Sections 116 and 157(h) of the Tax Code that pawnshops are not subject to 5% lending investors' tax which revocation is authorized under Section 246 of the Tax Code.

After a circumspect study of applicable laws and jurisprudence on the matter, this Court finds for the Petitioner.

For the proper disposition of the issue at hand, the pertinent provisions of the laws involved under the 1994 Tax Code are hereunder quoted:

Title V, Chapter I on Definitions of the Tax Code, as amended (1986)

Section 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__.*

B. Title V, Chapter II on Tax on Business of the Tax Code, as amended (1986)

Section 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

(ff) Pawnshops, one thousand pesos.

x-x-x x-x-x x-x-x

Section 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. (As amended by PD 1739, PD 1959 and PD 1994)[formerly Sec. 116]*

C. Presidential Decree No. 114, otherwise known as the Pawnshop Regulation Act

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 property 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

(Emphasis and underscoring supplied)

At the outset, the argument of the Respondent that pawnshops are lending investors pursuant to the latter's definition under then Section 157(u) of the Tax Code, as amended, would seem to hold water in the light of the fact that a pawnshop is undeniably in the habit of lending money at interest. This can be discerned readily from the provisions of the Pawnshop Regulation Act (P.D. 114) which under Sections 3 and 10 thereof, describes a pawnshop as "a person or entity engaged in the business of lending money" with none of it directly or indirectly stipulating, charging, demanding, taking or receiving "any higher rate or greater sum or value for any loan or forbearance than the rate allowed by the Usury Law for such transactions."

Relying on his authority under Sections 245 and 246 of the Tax Code, as amended, to make rulings or opinions in connection with the implementation of the provisions thereof and to revoke, modify or reverse the same, Respondent officially revoked BIR rulings exempting pawnshops from the 5 % lending investors' tax by issuing the now disputed RMC 15-91and RMO 43-91.

Be that as it may, We are constrained to disagree from the viewpoint adopted by the Respondent. By clear legislative intent, We find pawnshops not subject to the 5% lending investors' tax provided under Section 116 of the Tax Code, as amended.

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

> "We are in a situation where to adopt the literal import of the provisions of Section 157(u) in relation to Section 116 of the Tax Code, as amended, would lead to plain absurdity, injustice, contradiction and impairment of Constitutional limitations. For this reason, We are interpreting said provisions according to the principle of *ratio legis* or spirit or reason of the law.
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> xxx xxx xxx
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> 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. 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.
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> xxx xxx xxx
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> Again, if We go by definition and the rule on uniformity, banks, non-bank financial intermediaries and finance companies are supposed to be

> simply imposed a tax rate of 5% on their gross income because they do meet the criteria of what a lending investor should be. . The fact shows, however, that they are treated differently.
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> What We have presented so far in the preceding discussion succinctly demonstrates the erroneous decision reached by Respondent Commissioner in classifying pawnshops as lending investors subject to the 5% lending investors' tax. Inevitably, We reach the conclusion that the term "lending investor" as defined in Section 157(u) should be taken in isolation and should serve no other purpose than to simply clarify what a "lending investor" is all about. Indeed, as pointed out by the Petitioner, there is no special law governing lending investors (p.8, Petition for Review). Without any legal or dictionary meaning of what a lending investor is, this lexicological vacuum could have very well been the sole justification for the existence of said definition.
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> x x x x x x x x x"

A similar issue was likewise disposed of in the foregoing manner in the case entitled **Agencia Exquisite of Bohol, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5774 promulgated on June 7, 2000** (with *Entry of Judgment dated June 24, 2000*).

With regard to the validity of Revenue Memorandum Order No. 15-91, We rule that it is not implementing any particular provision of internal revenue laws, but is in fact a new and additional tax measure on pawnshops, which only Congress may enact. In fact, the Court of Appeals, in the case of *Commissioner of Internal Revenue versus Hon. Andres B. Reyes, Jr., et., al., C.A.-GR Sp. No. 28824*, ruled on the validity of the said RMO and RMC, thus:

> "x x x. Revenue Circulars 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 regulation to implement or carry into effect the

provision of the Code in the enforcement of taxes provided 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."

WHEREFORE, in view of all the foregoing the instant Petition for Review is hereby **GRANTED**. Revenue Memorandum Order No. 15-91 and Revenue Memorandum Circular No. 43-91, in so far as they classify pawnshops as lending investors subject to lending investor's tax is hereby declared **NULL AND VOID. ACCORDINGLY**, Assessment Notice No. 84-PT-13-94-99-9-081, 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