REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGENCIA EXQUISITE OF BOHOL, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5774

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,
Respondent.

Promulgated:
JUN 07 2000

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DECISION

This is an appeal for the cancellation of Assessment Notice No. 84-PT-13-95-98-5-0-63, dated April 20, 1998, representing five (5%) percent deficiency percentage/lending investors' tax in the amount of ₱106,538.59, inclusive of interest, surcharge and compromise penalty covering the year 1995; and the declaration of nullity of Revenue Memorandum Order No. 15-91, dated March 11, 1991, and Revenue Memorandum Circular No. 43-91, dated May 27, 1991, for being contrary to law.

Petitioner is a corporation duly organized and existing under Philippine laws, with office address at M.H. del Pilar Street, Tagbilaran City, Province of Bohol.

The facts are as hereunder stated.

On March 11 and May 27, 1991, the then Commissioner of Internal Revenue Jose U. Ong issued Revenue Memorandum Order[1] No. 15-91 and Revenue Memorandum Circular[2] No. 43-91, respectively, subjecting all pawnshops to the 5% lending investors' tax as prescribed under Section 116 of the Tax Code, as amended, together with the corresponding documentary stamp tax. Prior thereto, pawnshops were only subjected to a fixed tax of ₱1,000.00, but upon a restudy of Presidential Decree No. 114, the law regulating their establishment and operation, their principal activity was found to entail lending money at interest, a business activity akin to that of lending investors. This new interpretation by the Commissioner effectively revoked BIR[3] Ruling No. 6-90 and VAT[4] Ruling Nos. 067-90, 022-90 and 226-90 which have previously ruled that pawnshops were not subject to VAT and percentage taxes.

Pursuant thereto, Respondent Regional Director, through its Assessment Division, issued against Petitioner a Pre-Assessment Notice, dated April 02, 1998, with an attached Computation of Business Tax Deficiency, for the year ended 1995 representing the 5% lending investors' tax. As can be gathered from Petitioner's letter, dated April 29, 1998, made through its legal counsel (BIR records, p. 77), a conference was held over such pre-assessment as well as on the verification of Respondent's computations of the tax deficiency.

On May 22, 1998, Petitioner received a copy of Assessment Notice No. 84-PT-13-95-98-5-0-63, dated April 20, 1998, together with an attached letter of even date containing the following matters, viz: a computation of Petitioner's tax liability in the total amount of ₱106,538.59, inclusive of interest, surcharge and compromise penalty; an explanation that the decision of the Court of Tax Appeals, dated December 23, 1993, holding a pawnshop to be different from a lending investor, is not yet final and executory,

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1 "RMO" for brevity
2 Hereinafter referred to as "RMC"
3 Bureau of Internal Revenue
4 Value-Added Tax

the same having been appealed to the Supreme Court[5]; an information that pursuant to Section 223(a) of the Tax Code, as amended, tax liability may be assessed at any time within ten years after the discovery of the omission to file a return; and lastly, a request that the tax liability be paid within thirty (30) days from receipt of the letter.

In a letter, dated June 17, 1998, and received by Respondent Revenue Regional Director on June 19, 1998, Petitioner duly protested the above assessment, thus:

> "x x x x x x x x x
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> Your letter mentions about a Court of Appeals case. Please take administrative notice that the case you are referring to is entitled and docketed as *"Commissioner of Internal Revenue vs. Honorable Andres B. Reyes, Jr., et. al., CA GR Sp. No. 28824"(sic),* Court of Appeals, Metro Manila". It is correct to state that in such Decision the Court of Appeals ruled that a Pawnshop is not a lending Investor and a Pawn Ticket is not liable to pay documentary stamp tax. On the basis of such ruling, RMO No. 15-91 and RMC No. 43-91 providing liabilities for payment of these taxes were considered null and void.
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> This Formal Tax Protest is made therefore on the basis of the arguments submitted by the aggrieved taxpayer in that case as well as the findings of facts and law cited in such Decision. Our client adopts substantially all arguments presented thereat, to wit:
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> > 1. Lending Investor specified and defined under the tax code is not a pawnshop. Neither is a Pawnshop defined to include a Lending Investor. This fact is clearly established in Section 192 of the National Internal Revenue Code, as amended by Presidential Decree No. 1739 where a Lending Investor is treated separately from Pawnshop in the assessment of "Other Fixed Taxes".
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> > It is undisputed that Pawnshops are not mentioned under Section 209 of the NIRC, as amended by President (sic) Decree No. 1739, when said proviso imposed Percentage Taxes on Dealers in Securities and Lending Investors. Not being mentioned, Pawnshops are therefore not subject to

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[5] Referred to herein-after as the case of **Commissioner of Internal Revenue vs. Honorable Reyes, Jr. et al., CA-R. SP No. 28823** which has been appealed, and still pending, with the Supreme Court, docketed as **Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 113459**.

percentage taxes now sought to be collected in the aforecited Assessment Notice and Demand.

The reason that Pawnshop is treated differently from a Lending Investor certainly lies on the fact that Pawnshop Operations are regulated, monitored and supervised strictly by the Central Bank pursuant to Pawnshop Regulatory Act which is Presidential Decree No. 114. What surely prompted the law to hold a tight protective grip on the lending public from pawnshop operations could be the fact that mostly only small borrowers are the clients of these pawnshops. Conversely, there is no law applicable at the moment governing Lending Investors. Lending Investors' rates of interests are not fixed or pegged by the Central Bank and their transactions enjoy so much freedom and flexibility.

2. The Internal Revenue Commissioner has no authority to create and impose whatever taxes. Only the Legislative Branch of the Government is empowered to do so. If the Commissioner does so, it usurps an authority which belongs to another instrumentality of the government.

BIR Circulars are supposed to be issued to implement and enforce - and these ONLY - tax laws duly mandated by Congress. Unfortunately, Revenue Circulars Nos. 15-91 and 43-91 no longer simply enforce or implement a tax law. These questioned Circulars actually have illegally created a New and/or Additional Tax Law imposing tax liabilities on Pawnshops.

3. That decision in the case of *"Commissioner of Internal Revenue vs. Honorable Reyes", supra,* being a Decision rendered by the Court of Appeals - a collegiate or superior court - partakes of the nature of a law of the land. Thus, said decision, unless reversed by the Supreme Court, has the effect of nullifying the questioned Revenue Memorandum Circulars under which the Bureau is imposing the tax."

In reply to said protest, Respondent Revenue Regional Director denied the same in a letter-decision, dated February 4, 1999, a copy of which was received by Petitioner on February 25, 1999. Therein, Respondent explained that under BIR Ruling No. 221-

91, dated October 30, 1991, the definition of the term "lending investor" as provided in then Section 194 (u) of the Tax Code, as amended, [should be Section 157 (u)], encompasses the activity of a pawnshop operator. as it includes "all persons who make a practice of lending money for themselves or others at interest".

With the denial of its protest, Petitioner seasonably filed the instant Petition for Review on March 26, 1999.

At bar, Petitioner contends that there is no specific provision in the Tax Code, as amended by the VAT law[6] which expressly imposes on pawnshops the 5% lending investors' tax and documentary stamp tax; that Section 116 of the Tax Code, as amended, providing for a 5% lending investors' tax on gross income does not include pawnshops because the latter, as consistently ruled by previous Commissioners of the BIR from April 1982 up to December 1990, do not fall under the definition of a lending investor as cited in Section 157(u) of the old Tax Code (1985); that when the VAT law deleted the imposition of fixed taxes on January 1, 1988, pawnshops were not joined with lending investors, who, as before, were still charged said 5% lending investors' tax; and lastly, that subject RMO No. 15-91 and RMC No. 43-91 are not implementing rules but are impositions of new and additional taxes against pawnshops which, except for Congress alone, are beyond the authority of Respondent Commissioner to enact.

It is also the position of the Petitioner that pawnshops are widely different from lending investors in that the former are designed primarily to cater to the needs of small borrowers left unserved by the banking and other financial institutions in the country and are confined only to personal properties for security, with their "loaning coverage" strictly limited and regulated by the Pawnshop Regulatory Act and by Central Bank regulations, while the latter operate with greater flexibility and freedom and are not governed by any special law; and that in addition, each one is separately classified in the

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6 Executive Order No. 273

imposition of Other Fixed Taxes, as provided under Section 192 of the Tax Code, as amended.

Lastly, Petitioner prays that the enforcement or implementation of RMO No. 15-91 and RMC No. 43-91 must be held in abeyance pending the decision of the Supreme Court in **Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 113459**, *supra*, and, accordingly, seeks as a remedy the issuance of a preliminary injunction thereon.

On his part, Respondent Commissioner ripostes that under Section 245 of the Tax Code, as amended, he is empowered to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws; that pursuant to his authority under Section 246 of the same Code on non-retroactivity/revocation of rulings, RMO No. 15-91 and RMC 43-91 were issued expressly revoking previous BIR rulings declaring pawnshops as being not subject to the 5% lending investors' tax; and that, with the latter RMC additionally revoking BIR Ruling No. 325-88, dated July 13, 1988, which ruled that a pawn ticket is not subject to the documentary stamp tax, Respondent Commissioner has thereafter re-interpreted a pawn ticket as a document evidencing a pledge of personal property, a contract subject to documentary stamp tax under the provisions of Section 195 of the same Code.

Moreover, Respondent Commissioner contends that as defined under Section 157 (u) of the old Tax Code, as amended (1986), the term "lending investor", which includes all persons who make a practice of lending money for themselves or others at interest, is so broad enough to cover pawnshop operators.

Based on the preceding facts and circumstances, the argumentation of the parties and the laws and jurisprudence in point, We are confronted with a purely legal issue of:

> Whether or not pawnshops are included in the term "lending investors" as defined in then Section 157 (u) of the Tax Code.

We rule in favor of the Petitioner.

Before We begin with our discussion, the pertinent provisions of the laws herein involved, in addition to the above discussed RMC, RMO and rulings, are hereunder quoted for easy understanding, to wit:

A. 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)*

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 first blush, 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, *supra*, would seem to hold water in the light of the fact that a pawnshop is undeniably engaged in the practice of lending money at interest. This can be discerned 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 and RMO.

After a more careful scrutiny of the legal and factual milieu of the case at bar, however, more particularly on the underlying reasons behind the decision of the Court of Appeals, *supra*, We disagree with the position taken by the Respondent. By clear legislative intent, We find that pawnshops are not subject to the 5% lending investors' tax provided under Section 116 of the Tax Code, as amended.

In Our recently decided case of **Exquisite Pawnshop and Jewelry, Inc. vs. Crispino Vallejos, Jr., in his capacity as Revenue Regional Director, Revenue Region No. 13 and Commissioner of Internal Revenue, CTA Case No. 5741, promulgated on April 24, 2000,** We ruled upon an identical legal issue in this manner:

> "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. Thus:
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>> The principle has been variously formulated: "As a general rule of statutory construction, the spirit or intention of a statute prevails over the letter thereof, and what is within the spirit of a statute is within the statute although it is not within the letter thereof, while that which is within the letter but not within the spirit of the statute is not within the statute." **[Tanada vs. Cuenco, 103 Phil. 1051, 1086 (1957), citing 82 C.J.S. 613]** The spirit, rather than the letter, of a statute determines the construction thereof, and the court looks less to its words and more to its context, subject matter, consequence and effect. **[Manila Race Horse Trainers Assn., Inc. vs. De la Fuente, 88 Phil. 60 (1951); Go Chi vs. Go Cho, 96 Phil. 622 (1955)]** A statute must be read according to its spirit and intent, and where the legislative intent apparently conflicts with the letter of the law, the former prevails over the latter. **[Tanada vs. Cuenco, 103 Phil. 1051 (1957); Hidalgo vs. Hidalgo, G.R. No. 25326, May 29, 1970, 33 SCRA 105 (1970); Roa vs. Commissioner of Customs, 23 Phil. 315 (1912)]**

(All citations taken from the book: Statutory Construction by Agpalo, 3rd ed., 1995)

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 subjects 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.

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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 (Petition, p.9). 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."

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Revenue Memorandum Circular No. 43-91 and Revenue Memorandum Order No. 15-91, in so far as they classify pawnshops as lending investors subject to the 5% lending investors' tax under Section 116 of the Tax Code, as amended, are hereby declared **NULL AND VOID** for being unconstitutional and contrary to law. **ACCORDINGLY**, Assessment Notice No. 84-PT-13-95-98-5-0-63, dated April 20, 1998 is hereby declared **CANCELLED, WITHDRAWN and WITH NO FORCE AND EFFECT**.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

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

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