REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TRUSTWORTHY PAWNSHOP, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 6611**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 08 2004

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DECISION

This is an appeal from the decision of the respondent holding petitioner liable for the amount of P12,355,139.70 as deficiency value-added tax (VAT) for taxable year 1999.

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

Petitioner Trustworthy Pawnshop, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines and engaged in the pawnshop business.

On May 7, 2002, petitioner received a Preliminary Assessment Notice (PAN) dated April 23, 2002 from the Regional Director of Revenue Region No. 13 (Cebu City) assessing it for deficiency value-added tax in the amount of Twelve Million Three Hundred Thirty Six Thousand Three Hundred Fifty Eight and 6/100 Pesos (P12,336,358.06) (*Joint Stipulations of Facts and Issues, No. 3, CTA Records, page 67*).

In a letter dated May 23, 2003, petitioner protested the said Preliminary Assessment Notice (*Petition for Review, Annex "A").*

On July 12, 2002, petitioner received a Preliminary Collection Letter from the BIR's Revenue District Officer Estrella S. Lopez, demanding petitioner to pay the amount of Twelve Million Six Hundred Twelve Thousand Nine Hundred Eighty Eight and 71/100 Pesos (P12,612,988.71) as deficiency VAT and income tax. The petitioner treated the said Preliminary Collection Letter as the Final Assessment Notice and on July 30, 2002, decided to protest the same and also filed a Motion for Reconsideration to seek the reconsideration of the "assessment" *(Joint Stipulations of Facts and Issues, No. 4, CTA Records, page 68; Petition for Review, Annex "C", page 17*).

On August 9, 2002, petitioner received a Formal Letter of Demand dated June 4, 2002 assessing it for deficiency VAT for the year 1999 in the amount of Twelve Million Five Hundred Forty Eight Thousand Seven Hundred Twenty Eight and 41/100 Pesos (P12,548,728.41) (*Joint Stipulations of Facts and Issues, No. 7, CTA Records, page 68*) .

The petitioner protested the Formal Letter of Demand by filing a Motion for Reconsideration on August 13, 2002 addressed to the respondent (*Joint Stipulations of Facts and Issues, No. 8, CTA Records, page 68*).

The BIR issued an Amended Formal Letter of Demand and an Amended Assessment Notice both dated November 25, 2002 in the amount of Twelve Million Three Hundred Fifty Five Thousand One Hundred Thirty Nine 70/100 Pesos (P12,355,139.70) as deficiency VAT for the year 1999 which were received by petitioner on December 4, 2002 (*Joint Stipulations of Facts and Issues, No. 9, CTA Records, page 68*).

Then on December 12, 2002, the petitioner protested the Amended Formal Letter of Demand and Amended Assessment Notice in a Motion for Reconsideration (*Joint Stipulations of Facts and Issues, No.10, CTA Records, page 68*).

Up to the time of the filing of herein Petition for Review, the Motion for Reconsideration filed by petitioner remains unacted upon by the respondent. Hence, on March 11, 2003, petitioner filed the instant petition, seeking the reversal of the decision of the respondent by alleging, among others, that since pawnshops are not among those enumerated in Section 108 (A) of the 1997 Tax Code and Section 102 (a) of the old Tax Code as subject to VAT, *consequently*, it is not liable for the questioned deficiency VAT assessment.

In his Answer filed on April 8, 2003, respondent asserted the following Special and Affirmative Defenses, to wit:

> "7. In petitioner's Motion for Reconsideration dated August 12, 2002 of the Formal Letter of Demand and Assessment Notice dated June 4, 2002, it alleged that the computation of the VAT should be 1/11 and not 10% of gross receipts, agreeing with petitioner, respondent recomputed the assessment using 1/11 and not 10% of gross receipts. Hence, an Amended Formal Letter of Demand and an Amended Assessment Notice dated November 25, 2002 in the amount of P12,355,139.70 were issued, which were received by petitioner on December 4, 2002 and protested by it in a Motion for Reconsideration dated December 12, 2002. In a letter dated January 22, 2003, respondent denied the motion for reconsideration.
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> 8. Petitioner was informed of the law and the facts on which the assessment is made in compliance with Section 228 of the Tax Code.
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> 9. The assessment was issued within the prescriptive period.

10. Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration. Its gross receipts derived from such services are subject to the 10% VAT imposed under Section 108 (A) of the Tax Code. (Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc. CA-G.R. Sp. No. 68180, February 12, 2003).

11. The assessment was issued in accordance with law and regulations.

12. All presumptions are in favor of the correctness of tax assessments."

During the course of the trial, the parties decided to stipulate on the issues to be resolved by the court, namely:

1. Whether or not Petitioner was informed in writing of the law and the facts on which the assessment is made in compliance with Section 228 of the Tax Code.

2. Whether or not the assessment was issued within the prescriptive period.

3. Whether or not pawnshop business may be considered sales of services which is subject to 10% VAT.

4. Whether or not Revenue Memorandum Circular No. 45-012 has retroactive effect. (*Joint Stipulations of Facts and Issues, page 67, CTA Records*)

Regarding the first issue that respondent purportedly failed to inform petitioner in writing of the law and the facts on which the assessment is made in violation of Section 228 of the 1997 Tax Code, the court rules in the negative.

This court on numerous occasions sustained the validity of the assessment despite the alleged failure to inform the petitioner in writing of the law and facts on which the assessment is made if there is evidence showing that the petitioner managed to protest the assessment intelligently and efficiently. Among these cases is the case of **Belle Corporation vs. Commissioner of Internal Revenue,** *CTA Case No. 5930, April 4, 2002,* where this court held, thus:

> "Assuming *arguendo* that petitioner may raise said issue for the first time in this Court, we believe that petitioner was fully informed of the law and the facts on which the assessment is made thus answering the issue in the affirmative.
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> **It bears emphasis that the purpose of the aforesaid requirement is to give the taxpayer the opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the proposed assessment(s).** As correctly pointed out by respondent, as early as May 14, 1997, which is prior to the issuance of the subject assessments, petitioner already submitted its comments regarding two issues raised by the revenue examiners: first, the alleged understatement of 1995 sales of Pinecrest Village units by P7.4 million, and second, the reckoning date for the payment of capital gains tax on sales of shares and the documentary stamp tax thereon (pp. 439-442, BIR Records). **It is to be noted that these issues constitute the very bases of the assessments which were subsequently issued. Likewise, in its protest letter dated March 1, 1999, petitioner was able to explain in detail and submit documents to support its claim that the assessments were erroneous. Verily, at the time the assessments were issued, petitioner knew very well the law and the facts on which they were based. The purpose of the law having been served, Section 228 of the Tax Code may be deemed to have been complied with.**
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> **Since we rule that by petitioner's actual knowledge of the bases of the assessments, the requirement under Section 228 of the Tax Code that 'the taxpayer be informed of the law and the facts on which the assessment is made' is deemed to have been complied with, it follows then that the assessments dated November 27, 1997 are not null and void, even if the same failed to state the law and the facts on which they were based."** *(Emphasis supplied)*

Here, the petitioner was issued a Preliminary Assessment Notice (PAN) which it protested. The fact that petitioner was able to intelligently protest the Preliminary Assessment, Assessment Notice and Amended Assessment Notice, shows that it had actual knowledge of the law and the facts on which the assessment is made. Thus, the aforementioned requirement in Section 228 of the Tax Code is deemed to have been complied with (**Belle Corporation vs. Commissioner of Internal Revenue**, *CTA Case No. 5930, April 4, 2002*).

Proceeding to the second issue.

Petitioner claims that the right to assess deficiency VAT for the 1st and 2nd quarters of 1999 has prescribed, considering that it received only on August 9, 2002 the Formal Letter of Demand dated June 4, 2002, which it considered as the Final Assessment Notice, more than three (3) years from the filing of its VAT returns for said quarters on April 26, 1999 and July 29, 1999, respectively.

At this juncture, the court deems it appropriate to quote the pertinent provision of the 1997 Tax Code applicable to the issue before us, particularly Section 203, thus:

> "**Section 203. Period of Limitation Upon Assessment. Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period:** Provided, **That in a case where the a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.** For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (*Emphasis supplied*)

In the case at bar, the records prove that petitioner's VAT returns for the first (1st) and second (2nd) quarters of 1999 were filed on April 26, 1999 and July 26, 1999, respectively. In accordance with the above-quoted Section 203 of the 1997 Tax Code, counting three years from April 26, 1999 and July 26, 1999, within which the respondent has the right to assess, the last day for issuing a valid assessment for the said quarters must be April 25, 2002 and July 25, 2002, respectively. Considering that the Formal Letter of Demand was received by petitioner on August 9, 2002 only, clearly, the respondent's right to assess has already prescribed as far as the period from January to June 1999 is concerned.

We now go to the third issue.

Herein petitioner argued that the disputed VAT assessment has no legal basis since the "Sales or exchanges of services" subject to VAT mean the performance of services enumerated in Section 108 (A) of the 1997 Tax Code (Section 102 (a) of the old Tax Code). And a reading of both provisions of law discloses that pawnshops are not among those subject to imposition of the value-added tax.

Sections 105 and 108 (A) of the 1997 Tax Code which are the focal provisions are hereunder quoted for easy reference, to wit:

> "**SEC. 105. Persons Liable.** – Any person who, in the course of trade or business, sells, barters, exchanges, leases good or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code. xxx"
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> "**SEC. 108. Value-added tax on Sale of Services and Use or Lease of Properties.-**
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> (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.
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> **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; persons engaged in milling, lessor or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking of goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshments 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 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.** xxx" *(Emphasis supplied)*

Based on the wordings of Section 108 (A) of the NIRC, it is apparent that the objective of the legislature is not to limit its application to those enumerated therein, nor exclude other kinds of services performed for a fee, remuneration or consideration. In fact, the use of the term "including" in the statute proves the intent to enlarge rather than to limit its coverage. The petitioner's attempt to confine its application to those categorically mentioned evidently conflicts with the very meaning of the phrase "all kinds of services" as used in the above-quoted provisions.

The respondent correctly pointed out that there is an array of decisions where this court and the Court of Appeals consistently ruled that pawnshops are subject to VAT on sale of services under the afore-cited provisions of the 1997 Tax Code.

The Court of Appeals clarified in the case of **Commissioner of Internal Revenue vs. Exquisite Pawnshop and Jewelry, Inc.,** *CA-G.R. Sp No. 70319, May 13, 2003*, thus:

> **"Section 105 of the National Internal Revenue Code (NIRC) subjects "any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods to a value-added tax (VAT). While Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." It includes the services enumerated in the aforementioned section and similar services regardless of whether or not the performance thereof calls for the exercise or use of physical or mental faculties. The wordings of the definition of the phrase "sale or exchange of**

services" unambiguous. It encompasses the performance of all kinds of services for a fee, remuneration or consideration.

Thus, the sale or exchange of services is subject to 10% VAT. Indeed, for as long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.

Section 3 of Presidential Decree No. 114 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."

From the foregoing definition, the fact that, the principal activity of a pawnshop is lending money at interest on the security of personal property is instantly recognizable. Needless to state, the act of lending money at interest constitutes a performance of a service for a fee, remuneration or consideration.

The phrase "all kinds of services" as stated in the second paragraph of Section 108 (A) of Republic Act No. 8424 is broad enough to cover the kind of service which is provided by pawnshops to their borrowers, that is lending money in consideration of personal property delivered as security. Hence, a pawnshop is engaged in the sale of services that is subject to VAT under Section 108 (A) of the Tax Code, although it is not specifically mentioned in the law.

Clearly then, pawnshops are subject to value-added tax." *(Emphasis supplied)*

In the same way, this court in the recent case of **Cebu Mabuhay Pawnshop, Inc. vs. Commissioner of Internal Revenue**, *CTA Case No. 6266, promulgated March 25, 2004*, explained, to wit:

"Prescinding from the above law, any sale of services for others for a fee, remuneration or consideration is subject to 10% VAT. **The phrase "sale or exchange of services" encompasses the performance of "all kinds of services in the Philippines for others for a fee, remuneration or consideration. It includes the services enumerated therein and similar services regardless of whether or not the performance thereof calls for the exercise of physical or mental faculties.**

xxx xxx xxx

> **From the plain language of the law the sale or exchange of services is subject to VAT and the phrase "sale or exchange of services" encompasses the performance of all kinds of services for others for a fee, remuneration or consideration. The enumeration of persons performing services for a fee, remuneration or consideration, such as construction and service contractors, stock, real estate, commercial, customs and immigration brokers, etc., is merely to give examples of businesses performing services for a fee, remuneration or consideration that are subject to VAT. 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.** In the case of **Gomez vs. Ventura**, *54 Phil. 726*, it was ruled that:
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> > "xxx 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 the words are mentioned by way of example, or to remove doubts. (See Cyc., 1122 xxx.)". (Underscoring ours)
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> Section 108 (A) of the 1997 Tax Code 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". *(Emphasis supplied)*
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> The court further clarified thus:
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> "Furthermore, Section 109 [formerly Section 103] of the Tax Code, as amended, enumerates the transactions that are exempt from VAT. Pawnshop transactions are not among the exempt transactions under the said section. Neither are there any express provisions of law exempting pawnshops from VAT. Since the transactions of pawnshops are not among those enumerated in Section 109 or any other express provision of law as VAT-exempt, it follows that the same are subject to VAT under Section 108 (A)." *(Emphasis supplied)*

Finally, it is a long standing rule that tax exemptions are construed strictly against the taxpayer (**Cyanamid Phils., Inc. vs. Court of Appeals**, *322 SCRA 639*). In the case of **Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation**, *G.R. No. 125355, March 30, 2000*, the Honorable Supreme Court affirmed that, "any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom. In the case of VAT, Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT." And this court in the absence of any circumstance or evidence that will release the subject matter from the application of the aforequoted statutes and jurisprudence will not exempt the case from the same valid and legally sound principle.

Accordingly, the court based on the aforestated finding is providing below a recomputation of petitioner's deficiency value-added tax for the third (3rd) and fourth (4th) quarters of taxable year 1999, to wit:

Gross Sales/Receipts		
Pawnshop (BIR Records, p. 832)	P85,013,714.73	
Sales of Jewelry (BIR Records, p.830)	1,921,501.83	P86,935,216.56
Less: Gross Sales/Receipts		
1st Quarter (BIR Records, p. 871)	P20,367,625.68	
2nd Quarter (BIR Records, p.870)	20,485,611.43	40,853,237.11
Gross Sales/Receipts for the 3rd and 4th Qtrs.		P46,081,979.45
VAT Due Thereon (10% of P46,081,979.45)		P 4,608,197.95
Less: Input tax		
3rd Quarter (BIR Records, p.868)	P 45,472.62	
4th Quarter (BIR Records, p.868)	48,185.25	93,657.87
VAT Payable		P 4,514,540.08
Less: Tax Paid		
3rd Quarter (BIR Records, p. 868)	P 5,127.56	
4th Quarter (BIR Records, p.868)	4,041.93	9,169.49
Deficiency VAT		P 4,505,370.59
Add: 20% Interest from 1-26-00 to 12-25-02		2,629,161.46
VAT Due and Payable		P 7,134,532.05

The recomputed amount is in accordance with the findings that the assessment covering the first (1st) and second (2nd) quarters of 1999 has prescribed and that the respondent erroneously computed the output VAT due on petitioner's gross receipts by multiplying the amount of P85,013,714.73 by 1/11 instead of 10%. The latter finding gets its support from the ruling made by this court in the case of **Cebu**

Mabuhay Pawnshop, Inc. vs. Commissioner of Internal Revenue, *CTA Case No. 6266*, March 25, 2004, where the CTA declared that, "Where petitioner failed to subject to VAT the amounts received in the operation of its pawnshop business, its gross receipts must be multiplied by 10%".

Inasmuch as the court's answers to the first three allegations make the fourth issue moot and academic, the same will no longer be addressed.

WHEREFORE, the instant petition is **PARTIALLY DENIED** for lack of merit. Accordingly, the petitioner is hereby **ORDERED** to **PAY** the recomputed amount of P7,134,532.05 as deficiency value-added tax for the 3^{rd} and 4^{th} quarters of taxable year 1999, plus 25% surcharge and 20% delinquency interest computed from December 26, 2003 until fully paid pursuant to Sections 248 and 249 of the Tax Code of 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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 Justice