REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

TULAY SA PAG-UNLAD INC. (TSPI), Petitioner,	**CTA CASE NO. 8480**
	Members:
- versus -	**DEL ROSARIO**, *Chairperson* **UY**, *and* **MINDARO-GRULLA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 29 2015 ; 10:30 a.m.

x- -x

DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on April 27, 2012 by petitioner Tulay Sa Pag-Unlad Inc. (TSPI), pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, praying for the cancellation and setting aside of the Final Decision of the Commissioner of Internal Revenue (CIR) dated February 16, 2012 representing alleged Value Added Tax (VAT) and Documentary Stamp Tax (DST) deficiencies for January to December 2008 in the amount of **ONE HUNDRED ONE MILLION TWO HUNDRED THIRTY FIVE THOUSAND FIVE HUNDRED THIRTY THREE** and **59/100 (₱101,235,533.59)**.

THE FACTS

Petitioner Tulay Sa Pag-Unlad Inc. is a non-stock, non-profit corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at 2363 Nuestra Sra. Antipolo Street, Guadalupe Nuevo, Makati City 1212.[1]

Respondent, on the other hand, is the duly-appointed Chief of the Bureau of Internal Revenue (BIR), vested under the appropriate laws, with authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the NIRC of 1997, as amended, and other tax laws, rules and regulations and holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other Court processes.[2]

On June 16, 2010, petitioner received a Preliminary Assessment Notice (PAN) dated June 11, 2010, issued by BIR Revenue Region No. 8, Revenue District Office No. 50, representing alleged VAT and DST deficiencies, for January to December 2008.[3]

On June 29, 2010, petitioner filed a protest disputing the findings stated in the PAN.[4]

On July 23, 2010, petitioner received a Reply Letter recommending the issuance of a Formal Assessment Notice (FAN).[5]

On August 25, 2010, petitioner received a FAN dated August 20, 2010, together with Assessment Notice No. VT-LA3431-08-10-0434, representing alleged VAT deficiencies in the amount of ₱88,128,486.34 and Assessment Notice No. DS-LA-3431-08-0434, representing alleged DST deficiencies in the amount of ₱7,352,860.33 for January to December 2008.[6]

On September 22, 2010, petitioner filed its Formal Protest Letter against the FAN.[7]

On November 19, 2010, petitioner submitted all the necessary documents and evidence to substantiate its protest against the FAN, in

---

[1] Par. 1, Petition for Review, *CTA Division Docket*, p. 6.
[2] Par. 2, Petition for Review, *CTA Division Docket*, pp. 6-7.
[3] Par. 3, Petition for Review, *CTA Division Docket*, p. 7.
[4] Par. 4, *Id.*
[5] Par. 5, *Id.*
[6] Par. 6, Petition for Review, *CTA Division Docket*, pp. 7-8.
[7] Par. 7, Petition for Review, *CTA Division Docket*, p. 8.

compliance with the sixty (60) day period within which to submit supporting documents.[8]

On March 11, 2011, petitioner received the Final Decision on Disputed Assessment (FDDA) dated March 7, 2011, signed by Jaime B. Santiago, Regional Director of Revenue Region 8.[9]

On April 7, 2011, petitioner appealed the FDDA dated March 7, 2011 to the Office of the Commissioner of Internal Revenue (OCIR).[10]

On May 20, 2011, petitioner received a Notice dated April 18, 2011, issued by Deputy Commissioner Nelson Aspe, informing petitioner that its appeal was referred to the Legal Service, headed by Atty. Marissa O. Cabrera.[11]

On March 29, 2012, petitioner received the Final Decision of the Commissioner denying its Protest against the alleged VAT and DST deficiencies for January to December 2008 in the amount of **₱101,235,533.59**, computed as follows:

VAT

Gross Receipts	₱	400,863,585.00
VAT Rate		12%
Basic Deficiency Value Added Tax		-0-
Basic Tax Deficiency	₱	48,103,630.20
Add: 50% Surcharge		24,051,815.10
Interest (01/26/09 to 04/08/11)		21,139,239.13
Total Amount Due		**93,294,684.43**

DST

Basic Tax Due	₱	5,474,896.00
Add: Interest (01/06/09 to 04/08/11)		2,465,953.16
Total Amount Due	**₱**	**7,940,849.16**[12]

On April 27, 2012, petitioner filed the instant Petition for Review.[13]

On June 19, 2012, respondent CIR filed her Answer,[14] raising the following special and affirmative defenses: (a) petitioner failed to subject to

[8] Par. 8, *Id.*
[9] Par. 9, *Id.*
[10] Par. 10, *Id.*
[11] Par. 11, Petition for Review, *CTA Division Docket*, p. 9.
[12] Par. 12, *Id.*
[13] Petition for Review, *CTA Division Docket*, pp. 6-78.
[14] Answer, *CTA Division Docket*, pp. 84-88.

VAT the interest income earned in the amount of ₱400,863,585.00, pursuant to Section 108 of the NIRC of 1997, as implemented by Section 4.108-3 (g) par. 3 of Revenue Regulations No. 16, 2005, as amended; (b) petitioner's exemption from payment of income tax and filing of the corresponding income tax return under Section 27(g) of the NIRC of 1997, as amended, covers only petitioner's income in the pursuit of its purpose as a social welfare institution, and does not cover petitioner's other income, especially from its social lending activity; (c) the issue on petitioner's alleged social lending activity has long been resolved by the respondent in BIR Ruling No. 159-87 dated June 9, 1987; (d) the Loan Agreement of TSPI Development Corporation amounting to ₱1,094,979,009.00 was not subjected to DST pursuant to Section 179 of the NIRC of 1997, as amended, and as implemented by Revenue Regulations No. 13-2004; (e) considering that petitioner's lending activity falls under the definition of a "lending investor" under Section 4.108-3(g) of Revenue Regulations No. 16-2005, Sections 179 of the Tax Code of 1997, as amended, applies; (f) respondent has fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99; (g) the assessments issued against petitioner for deficiency VAT and DST for Fiscal Year ending June 30, 2008 were made in accordance with law and regulations; and, (h) all presumptions are in favor of the correctness of tax assessments issued by the respondent to herein petitioner for January to December 2008.

On August 16, 2012, petitioner filed an "Urgent Motion for the Suspension of Collection of Tax".[15]

On August 24, 2012, the Court granted the motion and suspended the collection of tax, as well as the enforcement of the Warrant of Distraint and Levy No. WDL-50-053012-011 and Warrant of Garnishment.[16]

After the Pre-Trial Conference on September 7, 2012,[17] the parties filed their "Joint Stipulations of Facts and Issues"[18] on September 20, 2012, "Supplemental Joint Stipulation of Facts and Issues"[19] on September 25, 2012 and "Amended Joint Stipulation of Facts and Issues"[20] on November 21, 2012.

On September 28, 2012, the Court approved the Joint Stipulation of Facts and Issues and Supplemental Joint Stipulation of Facts and Issues,

---

[15] *CTA Division Docket*, pp. 115-123.
[16] *CTA Division Docket*, pp. 127-132.
[17] Minutes of the Hearing held on September 7, 2012, *CTA Division Docket*, p. 156.
[18] Joint Stipulation of Facts and Issues (JSFI), *CTA Division Docket*, pp. 164-166.
[19] Supplemental Joint Stipulation of Facts and Issues, *CTA Division Docket*, pp. 171-172.
[20] *CTA Division Docket*, pp. 213-218.

terminated the Pre-Trial, and set the initial presentation of evidence for the petitioner.[21] On December 4, 2012, the Court approved the parties' Amended Joint Stipulation of Facts and Issues.[22]

During trial, petitioner presented testimonial and documentary evidence. Petitioner's Formal Offer of Evidence was admitted in the Resolutions dated July 17, 2013[23] and December 10, 2013[24]. Respondent, on the other hand, presented testimonial and documentary evidence. Respondent's documentary exhibits were admitted on June 19, 2014.[25]

Considering petitioner's Memorandum[26] filed on May 15, 2015 and respondent's Manifestation and Motion filed on April 30, 2015 stating that she is adopting all the arguments averred in the Special and Affirmative Defenses of her Answer dated June 18, 2012, as well as all the arguments/purposes for which all the documentary exhibits were formally offered, the case was deemed submitted for decision on May 26, 2015.[27]

PARTIES' ARGUMENTS

Petitioner's Arguments

Petitioner contends that it is an institution involved in the alleviation of poverty and empowerment of the poor through "Social Lending", and not a commercial lending institution engaged in business for profit; that the "Social Lending" activity it performs is beyond that of a commercial 'lending investor,' as defined under Section 4.108-3(g) of Revenue Regulations No. 16-2005, which provides:

> "Lending Investor" includes 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."

Petitioner further argues that there is a substantial distinction between commercial lending entities and those engaged in providing loans in the pursuit of social welfare; under Section 40 of the "General Banking Law of

[21] *CTA Division Docket*, p. 190.
[22] *CTA Division Docket*, pp. 251-252.
[23] *CTA Division Docket*, pp. 318-319.
[24] *CTA Division Docket*, p. 345.
[25] *CTA Division Docket*, pp. 483-484.
[26] Memorandum, *CTA Division Docket*, pp. 519-543.
[27] *CTA Division Docket*, p. 545.

2000,"[28] the distinction between microfinancing institutions, and business driven lending institutions is recognized, as follows:

> "Section 40. Requirement for Grant of Loans or Other Credit Accommodations.- xxxx
>
> In formulating rules and regulations under this Section, the Monetary Board shall recognize the peculiar characteristics of microfinancing, such as cash flow-based lending to the basic sectors that are not covered by traditional collateral."

Petitioner also claims that commercial lending institutions "engaged in business" or those entities which were established for profit or livelihood, must be treated differently from institutions organized and dedicated to charitable and social welfare service, and that the recognizable and substantial distinction between petitioner and commercial/business lending entities exempts petitioner from the imposition of VAT and DST.

Petitioner posits that the 12% VAT imposed upon it is unconstitutional as it contravenes Section 9, Article II of the 1987 Philippines Constitution; that the imposition of VAT and DST on petitioner's microfinancing activity violates the constitutional policy of freeing the people from poverty; and, that the imposition of VAT on its microfinancing ultimately causes additional burden to the underprivileged borrowers. Besides, while the 12% VAT, which is passed on, is substantially injurious to the underprivileged borrower, it would escalate rather than eradicate poverty.

Petitioner further contends that its social lending activity should not be subjected to DST; that DST on loan instruments under Section 179 of the Tax Code of 1997, as amended by R.A. 9243, applies only to the privilege of exercising a particular business, like a commercial lending; that DST is not applicable as petitioner is not in the business of commercial lending; and petitioner's microfinance activity does not fall within the ambit of Section 199 (d) of the Tax Code of 1997, as amended by R.A. 9243[29] as its microfinance facility generally does not involve an amount of more than ₱10,000.00.

---

[28] RA No. 8791.

[29] (d) Loan agreements or promissory notes, the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000), or any such amount as may be determined by the Secretary of Finance, executed by an individual for his purchase on installment for his personal use or that of his family and not for business or resale, barter or hire of a house, lot, motor vehicle, appliance or furniture: *Provided, however*, That the amount to be set by the Secretary of Finance shall be in accordance with a relevant price index but not to exceed ten percent (10%) of the current amount and shall remain in force at least for three (3) years.

Respondent's Counter-Arguments

Respondent, on the other hand, counter-argues that petitioner was found to have gross receipts on interest income earned as lending investor in the amount of ₱400,863,585.00, but failed to subject said interest income earned to VAT, pursuant to Section 108 of the NIRC of 1997, as implemented by Section 4.108-3 (g) par. 3 of Revenue Regulations No. 16, 2005, as amended; that petitioner's exemption from payment of income tax and filing of the corresponding income tax return under Section 27(g) of the NIRC of 1997, as amended, covers only petitioner's income in the pursuit of its purpose as a social welfare institution, and does not cover petitioner's income from other sources, especially from its social lending activity which had been ruled upon as subject to VAT in BIR Ruling No. 159-87 dated June 9, 1987.

With regard to DST, respondent claims that petitioner's Loan Agreements amounting to ₱1,094,979,009.00 are subject to DST, pursuant to Section 179 of the NIRC of 1997, as amended, and as implemented by Revenue Regulations No. 13-2004.

Respondent concludes that petitioner's lending activity is within the purview of the definition of a "lending investor" under Section 4.108-3(g) of Revenue Regulations No. 16-2005, and therefore falls squarely under the provisions of Sections 179 of the 1997 Tax Code.

ISSUES

In their Joint Stipulation of Facts and Issues, the parties submitted the following issues for resolution:[30]

> I.
>
> Whether petitioner is considered as a "lending investor" <u>under Section 157 (u) of the 1997 Tax Code</u> [*sic*], [31] and as implemented under Section 4.108-3 (g) of Revenue Regulations No. 16-2005.

[30] *CTA Division Docket*, p. 231.
[31] Should be Section 108 A(ii).

II.

Whether the exemption granted to petitioner from payment of income tax covers its other income, especially its income from social lending activity.

III.

Whether the various Loan Agreements extended by petitioner to its several clients aggregating to ₱1,094,979,009.00 for taxable year 2008 are subject to documentary stamp tax under Section 179 of the 1997 Tax Code, and as implemented by Revenue Regulations No. 13-2004.

IV.

Whether the interest income earned by petitioner as lending investor in the amount of ₱400,863,585.00 is subject to VAT under Section 108 of the NIRC of 1997, [and] as implemented by Section 4.108-3(g) par. 3 of Revenue Regulations No. 16-2005.

V.

Whether the assessment issued by the BIR to petitioner for deficiency Value-Added Tax and Documentary Stamp Tax for taxable year 2008 was made in accordance with law and regulations.

VI.

Whether petitioner is liable to pay the assessed deficiency Value-Added Tax and Documentary Stamp Tax in the aggregate amount of ₱101,235,533.59 (inclusive of surcharges and interest), for taxable year 2008.

VII.

Whether the present assessment is unconstitutional.

Being inter-related, the above issues will be discussed jointly.

THE COURT'S RULING

We deny the petition.

Petitioner is a lending investor subject to Value-Added Tax.

Section 105 of the NIRC of 1997, as amended, provides for the persons liable to pay VAT, to wit:

> **"TITLE IV**
> **VALUE- ADDED TAX**
> **CHAPTER I - IMPOSITION OF TAX**
>
> **Sec. 105.** *Persons Liable.* - 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 shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business."

Meanwhile, Section 108 (A) imposes VAT on sale or exchange of services, including the services of a lending investor, *viz*:

> **Section 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties. –*
>
> (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.
>
> The phrase 'sale or exchange of services' means the performance of all kinds or services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by xxx **lending investors**; xxx services of banks, non-bank financial intermediaries and finance companies; xxx and similar services regardless of whether or not

Mn

the performance thereof calls for the exercise or use of the physical or mental faculties. xxx"

Corollary thereto, Section 4.108-3(g) of Revenue Regulations (RR) No. 16-2005 defines "lending investors" as "**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.**"

A careful examination of petitioner's evidence shows that its Amended Articles of Incorporation[32] enumerates as one of its primary activities: "to conduct microfinance operations pursuant to R.A. 8425, the Social Reform and Poverty Alleviation Act (*Amended February 3, 2006*)". Petitioner presented its Executive Director, Eduardo A. Mendoza, to corroborate its position that it engages in microfinancing and collects interest from these programs. Thus, in his Judicial Affidavit dated November 13, 2012,[33] Eduardo Mendoza categorically declared that one of petitioner's primary purposes is to lend for a fee, to wit:

"Q18: Mr. Witness, the word "microfinance" is mentioned a lot, can you please explain to us what this exactly means in relation to Petitioner's activities?

A18: According to Republic Act No. 8425 "Microfinance" is defined as "a credit and savings mobilization program exclusively for the poor to improve the asset base of households and expand the access to savings of the poor. It involves the use of viable alternative credit schemes and savings programs including the extension of small loans, simplified loan application procedures, group character loans, collateral-free arrangements, alternative loan repayments, minimum requirements for savings, and small denominated savers' instruments"

At TSPI we construe this definition to support that microfinance is not a business/commercial rather, is the medium of TSPI's transformation/charitable/social welfare. It is a "program" for the poor to improve their lives and not a "regular conduct or pursuit of a commercial or economic activity"

Q19: How does this actually happen?

A19: To emphasize again the points already mentioned, TSPI provides an integrated package of socially-driven financial and non-financial programs to its poor clients. We implement a holistic approach that addresses the plight of the poor comprehensively by responding to their financial needs through our microfinance programs and improving their overall welfare and quality of life through our social loan programs and capacity-building interventions for spiritual transformation, leadership and entrepreneurial skills development, among many others.

---

[32] Exhibit "G-2".
[33] Exhibit "I", CTA Division Docket, pp. 200- 209.

Q20: Mr. Witness, what does Petitioner get out of providing these microfinance programs to the poor?

A20: TSPI, being a Christian microfinance organization, gets the fulfillment that it is able to bring the Good News to the poor and to empower its poor entrepreneurial clients to improve their lives. **TSPI then collects interest from these microfinance programs.**

Q21: Mr. Witness, what does Petitioner TSPI do with the interest it collects?

A21: TSPI utilizes all of interest collected to help transform more lives of the poor by sustaining the operations/continuity of the microfinance programs and funding community development and evangelization programs to achieve the holistic transformation of the lives of the poor clients and communities they live in.

In other words, the interest from the microfinance programs is the main source of funding of TSPI, together with commercial borrowing and grants.

And in compliance with the law, TSPI sees to it that its administrative expenses on annual basis does not exceed thirty percent (30%) of the total expenses for the taxable year and no part of its net income or asset belong to or inure to the benefit of any member, organizer, officer or any specific person.

In addition, even in case of dissolution, the assets of the corporation, would be distributed to another non-profit domestic corporation organized for similar purposes, or to the state for public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of said court shall best accomplish the general purpose for which the dissolved organization was organized.

Q22: Mr. Witness, do you have any proof to support this statement?

A22: First, TSPI's Articles of Incorporation specifically states that, "that no member of the Board of Trustees receives compensation or remuneration".

Second, the Financial Statements of TSPI will again show that the income derived from microfinance programs are not distributed as dividends and that none of it is given to any Board of Trustees. Rather, TSPI's income, as mentioned earlier, sustains the microfinance programs for the poor and to the other programs for holistic transformation.[34]"

While petitioner admitted that it is engaged in the activity of lending money at interest in the amounts ranging from 5,000.00 to 10,000.00,[35] it claims, however, that it does not operate for profit, and performs only a

[34] CTA Division Docket, pp. 204-205.
[35] Par. 20, Petition for Review, *CTA Division Docket*, p. 12.

social lending activity as it imposes nominal interest rates with no form of collateral.

The Court is not persuaded.

Petitioner's contention that microfinancing is different from the business of commercial lending for profit is devoid of merit. While it is true that a corporation or specifically, a "civic league or organization not organized for profit but operated exclusively for the promotion of social welfare" is exempted from income tax, pursuant to Section 30(G) of the NIRC of 1997, as amended, and Section 5 of RR 14-2007[36], the same cannot be said with regard to its VAT liability. Otherwise stated, Section 30(G) exempts petitioner for taxes on income under TITLE II of the NIRC of 1997, as amended. It cannot be gainsaid about its VAT liability as it is found under TITLE IV of the same Tax Code. Section 30 of the NIRC of 1997, as amended, explicitly provides:

> "SEC. 30 *Exemptions from Tax on Corporations* - The following organizations shall not be taxed under this Title in respect to **income** received by them as such."

Corollarily, RR No. 16-2005 expressly provides that any person who makes a practice of lending money for themselves or others **at interest**, as is the practice of petitioner, is considered as a **lending investor**.

Furthermore, Section 108 of the NIRC of 1997, as amended, defines the phrase "sale or exchange of services" contemplated under those liable for VAT, as "the performance of all kinds of services in the Philippines for others for a fee, remuneration, or consideration **including those of a lending investor.**" Thus, petitioner's act of lending money at interest makes it a lending investor, subject to the imposition of VAT. Section 108 does not distinguish microfinancing from commercial lending. "*Ubi lex non distinguit, nec nos distinguere debemus* (Where the law does not distinguish, we ought not to distinguish.)"[37] In *Commissioner of Internal Revenue vs.*

---

[36] "SECTION 5. Tax Treatment of Microfinance Services Rendered by Non-Governmental Organizations

All NGOs falling under the enumeration of Section 30 of the Tax Code of 1997, as amended, are exempt from income taxes, in respect of income received by them as such. However, income of such NGOs from microfinance activities and which are not in respect of their registered activities covered by Section 30 of the Tax Code of 1997, as amended, regardless of the disposition made of such income, shall be subject to tax under the Tax Code of 1997, as amended.

[37] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005.

Court of Appeals and Commonwealth Management and Services Corporation,[38] the Supreme Court ruled that even a non-stock, non-profit organization is liable to pay VAT on the sale of its goods or services, thus:

> "Contrary to COMASERCO's contention the above provision clarifies that even a *non-stock, non-profit,* organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity regardless of whether or not the entity is profit-oriented.
>
> The definition of the term "in the course of trade or business" incorporated in the present law applies to all transactions even to those made prior to its enactment. Executive Order No. 273 stated that any person who, in the course of trade or business, sells, barters or exchanges goods and services, was already liable to pay VAT. The present law merely stresses that even a nonstock, nonprofit organization or government entity is liable to pay VAT for the sale of goods and services.
>
> Sec. 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 supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking or project."[39]

The law expressly provides that for a taxpayer to be exempt from VAT, the transaction must be one of those enumerated in Section 109 of the NIRC of 1997, as amended. Undeniably, petitioner's microfinancing is not one of those transactions enumerated therein. It is a well-settled rule in statutory construction that the mention of one thing implies the exclusion of another thing not mentioned, or *expressio unius est exclusio alterius*. Thus, if a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect.[40] This rule, as a guide to probable legislative intent, is based upon the rules of logic and natural workings of the human mind.[41]

Petitioner's contention that it should be deemed as an "Other Non-Bank Financial Intermediary" similar to money changers and pawnshops whose transactions are exempt from VAT, pursuant to Section 109 (V) of

---

[38] G.R. No. 125355, March 30, 2000.
[39] *Id.*
[40] *Vera v. Fernandez,* L-31364, March 30, 1979.
[41] *Commissioner of Internal Revenue vs. Trustworthy Pawnshop, Inc.,* G.R. No. 149834, May 2, 2006 citing *Republic v. Estenzo,* L-35376, September 11, 1980.

the NIRC of 1997, as amended by RA 10378 is untenable. Section 4.108-3(g) of RR No. 16-2005 is clear and explicit as to who are lending investors. On the other hand, Section 22 (W) of the NIRC of 1997, as amended, defines non-bank intermediaries, as follows:

> (W) the term "*non-bank financial intermediary*" means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, **authorized by the *Bangko Sentral ng Pilipinas* (BSP) to perform quasi-banking functions.**

On the other hand, Section 2(D)(c) of RA 337, as amended, provides:

> "(c) 'Financial intermediaries' shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others."

True, petitioner's Amended Articles of Incorporation,[42] states, as among its corporate purposes, "to provide access to economic, financial, social and other developmental opportunities to small, cottage and micro-entrepreneurial sector of society and other poor and disadvantaged sectors so that they may live with dignity, sufficiency and responsibility demonstrating this through love and service" and "to conduct microfinance operations pursuant to R.A. 8425, the Social Reform and Poverty Alleviation Act (*Amended February 3, 2006*)". Nonetheless, it cannot be considered as "other non-bank financial intermediary" simply because, aside from its bare allegation, there is nothing on record to show that it has been authorized by the BSP to perform quasi-banking functions. In civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence. It is incumbent upon the party claiming affirmative relief from the court to convincingly prove its claim. Bare allegations, unsubstantiated by evidence are not equivalent to proof; in short, mere allegations are not evidence.[43]

In contrast, Section 108 of the NIRC of 1997, as amended, and RR No. 16-2005 are clear and unambiguous --- lending investors are subject to VAT. To be sure, tax exemptions are never presumed and are strictly construed against the taxpayer, and liberally in favor of the taxing authority. Petitioner must establish by preponderant evidence its claim for exemption from VAT for its approbation. This, petitioner failed to do.

---

[42] Exhibit "G-2".

[43] *Ermelinda C. Manaloto, et al., vs. Ismael Veloso III*, G.R. No. 171365, October 6, 2010.

Petitioner's loan agreements are subject to DST

With regard to petitioner's liability for DST on its loan agreements, petitioner invokes as basis for its exemption from DST, Section 9 of RA No. 9243, which provides:

> "**SEC. 9.** Section 199 of the National Internal Revenue Code of 1997, as amended is hereby further amended to read as follows:
>
> 'SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* - The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> (d) Loan agreements or promissory notes, the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000), or any such amount as may be determined by the Secretary of Finance, executed by an individual for his purchase on installment for his personal use or that of his family and not for business or resale, barter or hire of a house, lot, motor vehicle, appliance or furniture: *Provided, however,* That the amount to be set by the Secretary of Finance shall be in accordance with a relevant price index but not to exceed ten percent (10%) of the current amount and shall remain in force at least for three (3) years.'"

Petitioner, however, failed to present any evidence to prove that the loan agreements extended to its borrowers were used to purchase on installment for the borrower's personal use or for their family, and not for business or resale, barter or hire of a house, lot, motor vehicle, appliance or furniture. It is elementary that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[44] Thus, respondent's assessment of deficiency DST against petitioner is hereby upheld.

Petitioner's loan agreements, therefore, are subject to DST pursuant to Section 179 of the NIRC of 1997, as amended, which provides:

> **Section 179.** *Stamp Tax on Bank Checks, Drafts, Certificates of Deposit not Bearing Interest, and Other Instruments.* - On each bank check, draft, or certificate of deposit not drawing interest, or order for the payment of any sum of money drawn upon or issued by any bank, trust company, or any person or persons, companies or corporations, at sight or on demand, there shall be collected a documentary stamp tax of One peso and fifty centavos (P1.50).

---

[44] *Government Service Insurance System vs. Prudential Guarantee and Assurance, Inc. Development Bank of the Philippines and Land Bank of the Philippines,* G.R. No. 165585, November 20, 2013.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assessments for deficiency VAT and DST for January to December 2008 are hereby **UPHELD**. Petitioner Tulay sa Pag-Unlad, Inc. is hereby **ORDERED TO PAY** respondent the amount of ₱77,630,341.30, inclusive of the fifty percent (50%) surcharge provided under Section 248(B) of the NIRC of 1997, as amended, computed, as follows:

Tax Type	Basic Tax Due	50% Surcharge	Total
Value-Added Tax	₱ 48,103,630.20	₱ 24,051,815.10	₱ 72,155,445.30
Documentary Stamp Tax	5,474,896.00	0.00	5,474,896.00
Total	**₱ 53,578,526.20**	**₱ 24,051,815.10**	**₱ 77,630,341.30**

In addition, petitioner is hereby ordered to pay delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of ₱77,630,341.30, computed from April 28, 2012, until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusion in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice