REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGENCIA EXQUISITE OF BOHOL, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6219

JAIME B. SANTIAGO, 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:

NOV 26 2001

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DECISION

This is a petition seeking for the declaration of nullity of DA-297-97 (herein referred to by Petitioner as the September 1, 1997 unnumbered Revenue Memorandum) issued by Sixto S. Esquivas, the then OIC, Assistant Commissioner for Legal Service of the Bureau of Internal Revenue (BIR). Petitioner likewise prays that this Court declare as null and void Assessment Notice No. 84-VAT-13-98-2000-4-098 issued by Respondents against Petitioner on April 18, 2000 in the amount of P180,404.49, for alleged value-added tax (VAT) liability, inclusive of increments, for the year 1998.

The facts are undisputed.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines with principal office address at NDI Complex, A.S. Fortuna St., Mandaue City. It is the owner and operator of Agencia Exquisite of Bohol, Inc.

located at M.H. Del Pilar St., Tagbilaran City (par.1, Joint Stipulation of Admitted Facts and Issues, p.96, CTA Records).

On May 4, 1994, Republic Act (RA) No. 7716, otherwise known as The Expanded Value-Added Tax Law, was enacted, amending certain provisions of the National Internal Revenue Code (NIRC). Under the said Act, any person, who in the course of trade or business, sells, barters or exchanges goods, or properties, renders services and any person who imports goods shall be liable to the value-added tax (VAT) imposed in Section 100 to 102 of the said Code. On December 11, 1995 and December 9, 1995, Revenue Regulations Nos. 6-95 and 7-95, respectively, were issued to implement the provisions of R.A. No. 7716.

On January 1, 1997, R.A. No. 8241 took effect, further amending certain provisions of R.A. No. 7716. The said act, while still subjecting to VAT all kinds of services rendered in the Philippines for a fee, remuneration or consideration, made some additions to those transactions exempt from the VAT. The following day, January 2, 1997, Revenue Regulations No. 6-97 was issued to implement R.A. No. 8241.

On September 1, 1997, Sixto S. Esquivas IV issued the questioned DA-297-97, subjecting pawnshop operators to the 10% value-added tax pursuant to Section 102 (a) of the Tax Code, as amended by RA No. 7716, and further amended by R.A. No. 8241, beginning 1996 (Annex E, Petition for Review).

On January 1, 1998, R.A. No. 8424, otherwise known as the Tax Reform Act of 1997, took effect, to which were incorporated all the aforementioned amendments.

Thus, on April 18, 2000, pursuant to Section 108 of the NIRC, as amended by RA No. 8424, and by virtue of the DA-297-97 issued by Sixto E. Esquivas IV, Regional

Director Crispino B. Vallejo, Jr. sent herein Petitioner a Formal Letter of Demand with Details of Discrepancies attached thereto and Assessment Notice No. 84-VAT-13-98-2000-4-098, demanding payment of the sum of P180,404.49, inclusive of interest, surcharge and compromise penalty (Annexes F, F-1, F-2, Petition for Review).

On May 24, 2000, Petitioner filed with the Assessment Division of the BIR, Revenue Region No. 13, Cebu City, an administrative protest (Annex G, Petition for Review) on the following grounds:

"1. Section 108 of the National Internal Revenue Code as amended by RA 8424 does not include pawnshops as among those entities subject to a ten percent (10%) Value Added Tax.

2. Revenue Memorandum dated September 1, 1997 issued by OIC Assistant Commissioner Sixto S. Esquivias IV, is null and void.

3. The business operations of pawnshops are widely different from that of lending investors.

4. The Court of Tax Appeals has already declared RMO No. 15-91 and RMC No. 43-91, which imposed five percent (5%) lending investors tax on pawnshops, NULL and VOID."

Through a letter dated November 15, 2000 and received by counsel for the Petitioner on December 11, 2000, Respondent denied Petitioner's protest and reiterated its demand for payment of VAT liability.

On January 8, 2001, Petitioner filed the present case, raising the following legal arguments:

"5.1.1. There is no specific provisions in either the Tax Code or the VAT Law which expressly imposes on pawnshops the 10% VAT on its gross income.

5.1.2. Pawnshops are not engaged in the sale o^c goods or services in the course of its trade or business.

5.1.3. The Revenue Memorandum dated September 1, 1997 issued by OIC Assistant Commissioner Sixto Esquivas IV is NULL and VOID. It violates the due process limitation in taxation sanctioned by the Constitution, and is therefore, unconstitutional."

In his Answer filed on February 12, 2001, Respondent claimed by way of Special and Affirmative Defenses that:

"3. Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration. Its gross receipts derived from the sale of such services are subject to the 10% value-added tax imposed under Section 108(A) of the Tax Code.

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

5. All presumptions are in favor of the correctness of tax assessments.

6. Petitioner has not shown that the collection of the tax may jeopardize the interest of the Government and/or its interest, as required under Section 11 of R.A. No. 1125, which would justify the suspension of said collection."

The issues We are tasked to resolve are legal.

1. Whether or not under Section 108 of the National Internal Revenue Code, as amended by R.A. 8424, pawnshops are included as among those entities subject to a ten (10%) percent Value Added Tax.

2. Whether or not the unnumbered Revenue Memorandum dated September 1, 1997 issued by OIC Assistant Commissioner Sixto Esquivas IV, pursuant to which the questioned assessment and collection of the value added tax on petitioner, is valid and enforceable.

On the first issue, Petitioner contends that under Section 108 of the Tax Reform Act of 1997, all the entities engaged in the sale of services are enumerated, which include lending investors, banks, non-bank financial intermediaries and finance companies, and that pawnshops are not found in the enumeration of the entities subject to VAT. Thus, according to Petitioner, following the principle of "Expressio Unius Est Exclusio Alterius", when one or more things of a class are expressly mentioned, then others of the same class not mentioned are necessarily excluded.

Petitioner goes on to argue that pawnshops are widely different from lending investors. First, while lending investors can lend for any purpose and can require any security, whether real or personal property, pawnshops are confined only to personal property as security. Furthermore, Petitioner maintains that pawnshops and their operations are regulated by the Pawnshop Regulatory Act and by Central Bank regulations. On the other hand, there is no special law governing lending investors. Finally, Petitioner asserts that the most significant difference is the fact that pawnshops are designed to cater to the needs of small borrowers, left unserved by the banking and other financial institutions in the country.

Respondents, on their part, insist that under Section 108(A) of the Tax Code, the enumeration of persons performing services for a fee is merely intended to give examples of businesses subject to VAT on sale or exchange of services, hence, not exclusive. This means that other persons performing services for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT. Therefore, Respondents conclude that since a pawnshop is engaged in the sale of services, it is subject to VAT under Section 108(A) of the Tax Code.

Respondents also argue that assuming that under Section 108 (A) of the Tax Code, the VAT is imposable only on services performed by persons or entities enumerated therein, the services of a pawnshop would fall under the phrase "similar services" because its services are similar to those of a lending investor.

For clarity, We quote the pertinent provisions of Section 108 (A) of the Tax Reform Act of 1997:

> "**SEC. 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 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; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, café's 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. (Emphasis supplied)

From the above, it is quite clear that the services of pawnshops are not mentioned in the enumeration provided for under the aforequoted section. However, Respondents argue that the services of pawnshops are similar to those rendered by lending investors which, if warranted, would indeed subject the services rendered by Petitioner to value-added tax.

In this Court's ruling in the case of **Trustworthy Pawnshop, Inc. versus Collector of Internal Revenue, CTA Case No. 5691 promulgated on March 7, 2000**, the Court first passed upon the issue:

> "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 subject 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."

Our conclusion finds support in the case of **Commissioner of Internal Revenue vs. Hon. Andres B. Reyes, Jr., et. al., CA-G.R. SP No. 28824 promulgated on December 23, 1993,** where the Court of Appeals categorically ruled that a pawnshop is not a lending investor, thus:

> "xxx Contrary to petitioner's posture, a pawnshop is not a lending investor, and therefore it is not subject to percentage tax. Pawnshops and their operation are strictly regulated by the Central Bank, pursuant to P.D. 114. The charges and interest rates imposed by pawnshops are prescribed by the Central Bank to protect client's title. On the other hand, there is no law governing lending investors and the charges and interest they impose are flexible, not pegged by the Central Bank. In this case, petitioner seeks to justify the Revenue Circulars in question on the ground that the business of lending money by the pawnshop is akin to lending investors who are subject to percentage tax, hence, the pawnshop should also be subjected to percentage tax. This is taxation by implication which is legally proscribed (**Froechlich and Kuttner vs. Collector of Customs, 18 Phil. 461**)."

Finding Petitioner not subject to VAT, We, therefore find DA-297-97 or the alleged unnumbered Revenue Memorandum dated September 1, 1997, issued by OIC Assistant Commissioner Sixto Esquivas IV, as invalid and unenforceable.

DA-297-97, which, to Us, is more of a ruling rather than a memorandum as the same embodies opinions on queries from the Regional Director, does not have the force and effect of law. Although Courts may uphold administrative rulings, the same, however, must be in harmony with the provisions of the law. They cannot impose additional taxes.

As held in the aforementioned case of **Commissioner of Internal Revenue vs. Hon. Andres Reyes, Jr, et.al.:**

> "xxx Section 245 of the Tax Code has limited or confined petitioner's power to issuing rules and regulations to implement or carry into effect the provision of the Code in the enforcement of taxes 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**. DA-297-97 issued by Sixto S. Esquivas IV on September 1, 1997, which subjected pawnshop operators to the 10% VAT, is hereby declared **NULL** and **VOID. Accordingly**, Assessment Notice No. 84-VAT-13-98-2000-4-098 dated April 18, 2000 is hereby declared **CANCELLED, WITHDRAWN and WITH NO FORCE AND EFFECT**.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(with Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
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