

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. JOSEFINA LEAL, RESPONDENT.

G.R. No. 113459. November 18, 2002

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Pursuant to Section 116 of Presidential Decree No. 1158,[1] (The National Internal Revenue Code of 1977, as amended [Tax Code for brevity]), which provides:

“SEC. 116. Percentage tax on dealers in securities; lending investors. – Dealers in securities shall pay a tax equivalent to six (6%) per centum of their gross income. Lending investors shall pay a tax equivalent to five (5%) per cent of their gross income.” (emphasis added)

the Commissioner of Internal Revenue, petitioner, issued Revenue Memorandum Order (RMO) No. 15-91 dated March 11, 1991,[2] imposing 5% lending investor’s tax on pawnshops based on their gross income and requiring all investigating units of the Bureau of Internal Revenue (BIR) to investigate and assess the lending investor’s tax due from them. The issuance of RMO No. 15-91 was an offshoot of petitioner’s evaluation that the nature of pawnshop business is akin to that of “lending investors,” which term is defined in Section 157 (u) of the Tax Code in this wise:

“(u) Lending investors include all persons who make a practice of lending money for themselves or others at interests.”

Subsequently, petitioner issued Revenue Memorandum Circular (RMC) No. 43-91 dated May 27, 1992,[3] subjecting the pawn ticket to the documentary stamp tax as prescribed in Title VII of the Tax Code.

Adversely affected by those revenue orders, herein respondent Josefina Leal, owner and operator of Josefina’s Pawnshop in San Mateo, Rizal, asked for a reconsideration of both RMO No. 15-91 and RMC No. 43-91 but the same was denied with finality by petitioner in its BIR Ruling No. 221-91 dated October 30, 1991.[4]

Consequently, on March 18, 1992, respondent filed with the Regional Trial Court (RTC), Branch 75, San Mateo, Rizal, a petition for prohibition, docketed as Civil Case No. 849-92,[5] seeking to prohibit petitioner from implementing the revenue orders.

Petitioner, through the Office of the Solicitor General, filed a motion to dismiss[6] the petition on the ground that the RTC has no jurisdiction to review the questioned revenue orders and to enjoin their implementation. Petitioner contends that the subject revenue orders were issued pursuant to his power “to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws.”[7] Thus, the case falls within the exclusive appellate jurisdiction of the Court of Tax Appeals, citing Section 7 (1) of Republic Act No. 1125.[8]

The RTC, through then Presiding Judge Andres B. Reyes, Jr.,[9] issued an order on April 27, 1992[10] denying the motion to dismiss, holding that the revenue orders are not assessments to implement a Tax Code provision, but are “in effect new taxes (against pawnshops) which are not provided for under the Code,” and which only

Congress is empowered to impose.

Petitioner then filed with the Court of Appeals a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court (now 1997 Rules of Civil Procedure, as amended), docketed as CA-G.R. SP No. 28824. Petitioner alleged that in denying the motion to dismiss, the RTC Judge acted without or in excess of his jurisdiction, or with grave abuse of discretion. In its Decision dated December 23, 1993, the Court of Appeals dismissed the petition “for lack of legal basis”[11] and ruled that “the (RTC) order denying the motion to dismiss is subject to immediate challenge before the Supreme Court (not the Court of Appeals), which is the sole authority to determine and resolve an issue purely of law pursuant to Section 5, Article VIII of the 1987 Constitution.”[12] Nonetheless, the Court of Appeals resolved the case on the merits, sustaining the RTC ruling that the questioned revenue orders are “new additional measures which only Congress is empowered to impose.”[13]

Hence, the instant petition for review on certiorari under Rule 45 of the Rules of Court raising the following issues:

1. WHETHER THE COURT OF APPEALS HAS JURISDICTION OVER A PETITION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT WHERE THE AUTHORITY OF THE REGIONAL TRIAL COURT TO REVIEW THE SUBJECT REVENUE ORDERS IS BEING QUESTIONED;
2. WHETHER IT IS THE RTC OR THE COURT OF TAX APPEALS WHICH HAS JURISDICTION OVER THE INSTANT CASE.

Anent the first issue, petitioner contends that the Court of Appeals has “original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus and quo warranto, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction,” pursuant to Section 9(1) of Batas Pambansa Blg. 129. Petitioner thus claims that his petition for certiorari filed with the Court of Appeals pursuant to Rule 65 of the Rules of Court is the proper recourse to assail the RTC order denying his motion to dismiss.

Petitioner’s contention is meritorious. The Court of Appeals erred in holding that it has no jurisdiction over petitioner’s special civil action for certiorari under Rule 65 of the Rules. While this Court exercises original jurisdiction to issue the extraordinary writ of certiorari (as well as the writs of prohibition, mandamus, quo warranto, and habeas corpus),[14] such power is not exclusive to this Court but is concurrent with the Court of Appeals[15] and the Regional Trial Courts.[16] We reiterate our pronouncement on this issue in *Morales vs. Court of Appeals*: [17]

“Under Section 9 (1) of B.P. Blg. 129, the Court of Appeals has concurrent original jurisdiction with the Supreme Court pursuant to Section 5 (1) of Article VIII of the Constitution and Section 17 (1) of the Judiciary Act of 1948, and with the Regional Trial Court pursuant to Section 21 (1) of B.P. Blg. 129 to issue writs of certiorari, mandamus, prohibition, habeas corpus, and quo warranto. These are original actions, not modes of appeals.

“Since what the petitioner filed in CA-G.R. SP No. 40670 was a special civil action for certiorari under Rule 65, the original jurisdiction of the Court of Appeals thereon is beyond doubt.

“This error of the Court of Appeals was due to its misapplication of Section 5 (2) (c) of Article VIII of the Constitution and of that portion of Section 17 of the Judiciary Act of 1948 vesting upon the Supreme Court exclusive jurisdiction to review, revise, reverse, modify, or affirm on certiorari as the law or rules of court may provide, final judgments and decrees of inferior courts in all cases in which the jurisdiction of any inferior court is in issue. It forgot that this constitutional and statutory provisions pertain to the appellate – not original – jurisdiction of the Supreme Court, as correctly maintained by the petitioner. An appellate jurisdiction refers to a process which is but a continuation of the original suit, not a commencement of a new action, such as that

of a special civil action for certiorari. The general rule is that a denial of a motion to dismiss or to quash in criminal cases is interlocutory and cannot be the subject of an appeal or of a special civil action for certiorari. Nevertheless, this Court has allowed a special civil action for certiorari where a lower court has acted without or in excess of jurisdiction or with grave abuse of discretion in denying a motion to dismiss or to quash. The petitioner believed that the RTC below did so; hence, the special civil action for certiorari before the Court of Appeals appeared to be the proper remedy.” (italics added)

Such concurrence of original jurisdiction among the Regional Trial Court, the Court of Appeals and this Court, however, does not mean that the party seeking any of the extraordinary writs has the absolute freedom to file his petition in the court of his choice. The hierarchy of courts in our judicial system determines the appropriate forum for these petitions. Thus, petitions for the issuance of the said writs against the first level (inferior) courts must be filed with the Regional Trial Court and those against the latter, with the Court of Appeals. A direct invocation of this Court’s original jurisdiction to issue these writs should be allowed only where there are special and important reasons therefor, specifically and sufficiently set forth in the petition. This is the established policy to prevent inordinate demands upon the Court’s time and attention, which are better devoted to matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court’s docket.[18] Thus, it was proper for petitioner to institute the special civil action for certiorari with the Court of Appeals assailing the RTC order denying his motion to dismiss based on lack of jurisdiction.

While the Court of Appeals correctly took cognizance of the petition for certiorari, however, let it be stressed that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not to the RTC.

The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops. This is clear from petitioner’s RMO No. 15-91, pertinent portion of which reads:

“A restudy of P.D. 114 (the Pawnshop Regulation Act) shows that the principal activity of pawnshops is lending money at interest and incidentally accepting a ‘pawn’ of personal property delivered by the pawner to the pawnee as security for the loan (Sec. 3, *ibid.*). Clearly, this makes pawnshop business akin to lending investor’s business activity which is broad enough to encompass the business of lending money at interest by any person whether natural or juridical. Such being the case, pawnshops shall be subject to the 5% lending investor’s tax based on their gross income pursuant to Section 116 of the Tax Code, as amended.”[19]

Such revenue orders were issued pursuant to petitioner’s powers under Section 245 of the Tax Code, which states:

"SEC. 245. Authority of the Secretary of Finance to promulgate rules and regulations. — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

"The authority of the Secretary of Finance to determine articles similar or analogous to those subject to a rate of sales tax under certain category enumerated in Section 163 and 165 of this Code shall be without prejudice to the power of the Commissioner of Internal Revenue to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes." (emphasis added)

Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals [CTA for brevity]), as amended, such rulings of the Commissioner of Internal Revenue are appealable to that court, thus:

"SEC. 7. Jurisdiction. – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;

x x x x x x x x." (emphasis added)

"SEC. 11. Who may appeal; effect of appeal. – Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, or the Commissioner of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

x x x x x x x x." (emphasis added)

"SEC. 18. x x x. – No judicial proceedings against the Government involving matters arising under the National Internal Revenue Code, the Customs Law or the Assessment Law shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the Court of Tax Appeals and disposed of in accordance with the provisions of this Act.

x x x x x x x x." (emphasis added)

This Court, in *Rodriguez, etc. vs. Blaquera, etc.*,^[20] ruled:

"Plaintiff maintains that this is not an appeal from a ruling of the Collector of Internal Revenue, but merely an attempt to nullify General Circular No. V-148, which does not adjudicate or settle any controversy, and that, accordingly, this case is not within the jurisdiction of the Court of Tax Appeals.

"We find no merit in this pretense. General Circular No. V-148 directs the officers charged with the collection of taxes and license fees to adhere strictly to the interpretation given by the defendant to the statutory provisions abovementioned, as set forth in the Circular. The same incorporates, therefore, a decision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) on the manner of enforcement of the said statute, the administration of which is entrusted by law to the Bureau of Internal Revenue. As such, it comes within the purview of Republic Act No. 1125, Section 7 of which provides that the Court of Tax Appeals 'shall exercise exclusive appellate jurisdiction to review by appeal x x x decisions of the Collector of Internal Revenue in x x x matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue.' x x x." (italics added)

In the same vein, we held in *Meralco Securities Corporation vs. Savellano*,^[21] thus:

"Respondent judge has no jurisdiction to take cognizance of the case because the subject matter thereof clearly falls within the scope of cases now exclusively within the jurisdiction of the Court of Tax Appeals. Section 7 of Republic Act No. 1125, enacted June 16, 1954, granted to the Court of Tax Appeals exclusive appellate jurisdiction to review by appeal, among others, decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue. The law transferred to the Court of Tax Appeals jurisdiction over all cases involving said assessments previously cognizable by Courts of First Instance, and even those already pending in said courts. The question of whether of not to impose a deficiency tax assessment on Meralco Securities Corporation undoubtedly comes within the purview of the words "disputed assessments" or of "other matters arising under the National Internal Revenue Code..." In the case of *Blaquera, etc. vs. Rodriguez, etc.* (103 Phil. 511 [1958]), this Court ruled that 'the determination of the correctness or incorrectness of a tax assessment to which the taxpayer is not agreeable, falls within the jurisdiction of the Court of Tax Appeals and not of the Court of First Instance, for under the provisions of Section 7 of Republic Act No. 1125, the Court of Tax Appeals has exclusive appellate jurisdiction to review, on appeal, any decision

of the Collector of Internal Revenue in cases involving disputed assessments and other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.’”

Here, as earlier mentioned, respondent Josefina Leal, being a pawnshop owner, is assailing the revenue orders imposing 5% lending investor’s tax on pawnshops issued by petitioner. Clearly then, she should have filed her petition with the Court of Tax Appeals, not the RTC. Indeed, the Court of Appeals erred in holding that the RTC order should have been challenged before this Court.

WHEREFORE, the petition is GRANTED. Accordingly: (1) the assailed Decision dated December 23, 1993 of the Court of Appeals in CA-G.R. SP No. 28824 is SET ASIDE; (2) the Order dated April 27, 1992 and the Writ of Preliminary Injunction dated May 21, 1992 both issued by the RTC, Branch 75, San Mateo, Rizal in Civil Case No. 849-92, are declared NULL and VOID for having been issued without jurisdiction; and (3) Civil Case No. 849-92 is ordered DISMISSED.

SO ORDERED.

Puno (Chairman), Panganiban, Corona, and Carpio-Morales, JJ., concur.

[1] A Decree which consolidated and codified all the internal revenue laws of the Philippines into a single tax code known as the National Internal Revenue Code of 1977.

[2] Annex “B” of Petition for Certiorari, Rollo, at 51-52.

[3] Annex “C,” *id.*, at 53-54.

[4] Motion to Dismiss, Rollo, at 71.

[5] Annex “D,” *supra*, at 55-68.

[6] Annex “E,” *id.*, at 69-82.

[7] Section 245, National Internal Revenue Code of 1977.

[8] Enacted on June 16, 1954, Section 7 provides: “Sec. 7. Jurisdiction. – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, x x x – (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; x x x.” (emphasis added).

[9] Now Associate Justice of the Court of Appeals.

[10] Annex “F,” *supra*, at 83.

[11] Rollo, at 50.

[12] *Id.*, at 48.

[13] *Id.*, at 49.

[14] Section 5 (1), Article VIII of the 1987 Constitution.

[15] Section 9 (1) of the Judiciary Reorganization Act of 1980 (Batas Pambansa Blg. 129).

[16] Section 21 (1), *id.*; Section 4, Rule 65, 1997 Rules of Civil Procedure, as amended; *Fortich vs. Corona*, 289 SCRA 624, 644-645 (1998).

[17] 283 SCRA 211, 222 (1997).

[18] *Fortich vs. Corona*, *supra* (footnote 17), at 645-646, citing *People vs. Cuaresma*, *supra* (footnote 17), at 424.

[19] *Rollo*, at 52.

[20] 109 Phil. 598, 601-602 (1960).

[21] 117 SCRA 804, 809-810 (1982).

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