COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. TRUSTWORTHY PAWNSHOP, INC., RESPONDENT.

G.R. NO. 149834. May 02, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated August 29, 2001 of the Court of Appeals in CA-G.R. SP No. 59250.

The undisputed facts are:

Trustworthy Pawnshop, Inc. (respondent Pawnshop) is a domestic corporation engaged in the pawnshop business.

On March 11, 1991, the Commissioner of Internal Revenue (CIR) issued Revenue Memorandum Order (RMO) No. 15-91, classifying the pawnshop business as "akin to the lending investor's business activity" and subjecting both to the 5% lending investor's tax based on their gross income, pursuant to then Section 116 of the National Internal Revenue Code (NIRC) of 1977, as amended.

This RMO was clarified by Revenue Memorandum Circular (RMC) No. 43-91 dated May 27, 1991, mandating inter alia that pawnshop operators "shall become liable to the lending investor's tax on their gross income beginning January 1, 1991;" that "(s)ince the deadline for the filing of percentage tax return and the payment of the tax on lending investors covering the first quarter of 1991 has already lapsed, taxpayers are given up to June 30, 1991 within which to pay the said tax without penalty;" that if the tax is paid after said date, "the corresponding penalties shall be assessed and computed from April 21, 1991;" and that since pawnshops are considered lending investors, they are also subject to documentary stamp taxes.

Pursuant to these issuances, the Bureau of Internal Revenue (BIR), Revenue Region No. 7, Cebu City, issued Assessment Notice No. 81-PT-13-94-97-6-73, dated June 13, 1997, against respondent Pawnshop demanding payment of deficiency percentage tax for the year 1994 amounting to P2,108,335.19, inclusive of surcharges and interests. In addition to that amount, a compromise penalty of P93,000.00 was also imposed.

Feeling aggrieved, respondent Pawnshop, on July 4, 1997, filed with the Revenue Region No. 7 an administrative protest, alleging that a pawnshop business is different from a lending investor's business, hence, should not be subjected to the 5% lending investor's tax.

Its protest not having been acted upon, respondent Pawnshop elevated the matter to the Office of petitioner CIR.

On October 12, 1998, petitioner CIR issued a warrant of levy and/or distraint against respondent Pawnshop, which act was considered a final decision denying the latter's protest.[2]

On November 11, 1998, respondent Pawnshop filed with the Court of Tax Appeals (CTA) a Petition for Review, docketed as CTA Case No. 5691. On March 7, 2000, the CTA rendered its Decision[3] in favor of respondent Pawnshop and against petitioner CIR, thus:

> WHEREFORE, in view of all the foregoing, the instant petition for review is hereby GRANTED. Revenue Memorandum Order No. 15-91 and Revenue Memorandum Circular No. 43-91, insofar as they classify pawnshops as lending investors subject to 5% lending investor's tax, are hereby declared NULL and VOID for being contrary to law and the Constitution. Accordingly, Assessment Notice No. 81-PT-13-94-97-6-73, dated June 13, 1997, is likewise CANCELLED and SET ASIDE.
>
> SO ORDERED.

The CTA ruled, among others, that for taxation purposes, a pawnshop business cannot be classified as a lending investor as both are subject to different tax treatments. Thus, they may not be treated alike for the purpose of imposing the 5% lending investor's tax.

On May 24, 2000, the CTA likewise denied petitioner CIR's Motion for Reconsideration.[4]

Undaunted, petitioner CIR filed with the Court of Appeals a Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure, as amended, docketed as CA-G.R. SP No. 59250. On August 29, 2001, the Appellate Court rendered its Decision[5] dismissing the petition for lack of merit.

Petitioner CIR now comes to us through the instant Petition for Review on Certiorari, alleging that the Court of Appeals erred in holding that pawnshops are not subject to the 5% lending investor's tax under then Section 116 of the NIRC of 1977, as amended.

In his Comment, the Solicitor General prays that CIR's petition be granted and the assailed Decision of the Court of Appeals be reversed and set aside, and a new one be rendered ordering respondent Pawnshop to pay the deficiency lending investor's tax in question.

Respondent Pawnshop, in its Comment and Reply, vehemently disputes the positions of both the petitioner CIR and the Solicitor General, praying that the challenged Decision be affirmed.

The sole issue for our resolution is whether pawnshops are considered lending investors under the provisions of the NIRC of 1977, as amended, for the purpose of subjecting the former to the 5% lending investor's tax.

We uphold the challenged Decision of the Court of Appeals affirming that of the CTA. The question raised for our resolution is not a novel one.

In Commissioner of Internal Revenue v. Michael J. Lhuillier Pawnshop,[6] we were confronted with a similar issue: "Are pawnshops included in the term lending investors for the purpose of imposing the 5% percentage tax under then Section 116 of the National Internal Revenue Code of 1977, as amended by Executive Order No. 273?" We answered the question in the negative, holding that while pawnshops are indeed engaged in the business of lending money, they cannot be deemed "lending investors" for the purpose of imposing the 5% lending investor's tax. Such ruling is anchored on the following reasons:

> First. Under Section 192, paragraph 3, sub-paragraphs (dd) and (ff) of the NIRC of 1997, prior to its amendment by E.O. No. 273, as well as Section 161, paragraph 2, sub-paragraphs (dd) and (ff) of the NIRC of 1986, pawnshops and lending investors were subjected to different tax treatments, thus:
>
> (3) Other Fixed Taxes. - The following fixed taxes shall be collected as follows, the amount stated being for the whole year, when not otherwise specified:

x x x

> (dd) Lending Investors -
>
> - In chartered cities and first class municipalities, one thousand pesos;

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- In second and third class municipalities, five hundred pesos;

- In fourth and fifth class municipalities and municipal districts, two hundred fifty pesos: Provided, That lending investors who do business as such in more than one province shall pay a tax of one thousand pesos.

x x x

(ff) Pawnshops, one thousand pesos.

Second. Congress never intended pawnshops to be treated in the same way as lending investors. Section 116 of the NIRC of 1977, as renumbered and rearranged by E.O. No. 273, was basically lifted from Section 175 (formerly Sec. 209, NIRC of 1977, as amended by P.D. 1739, Sept. 17, 1980) of the NIRC of 1986, which treated both tax subjects differently. Section 175 of the latter Code reads as follows:

Sec. 175. Percentage tax on dealers in securities, lending investors. - Dealers in securities shall pay a tax equivalent to six percent (6%) of their gross income. Lending investors shall pay a tax equivalent to five percent (5%) of their gross income. (As amended by P.D. No. 1739, P.D. No. 1959, and P.D. No. 1994).

We note that the definition of lending investors found in Section 157 (u) of the NIRC of 1986 is not found in the NIRC of 1977, as amended by E.O. No. 273, where Section 116 invoked by the CIR is found. However, as emphasized earlier, both the NIRC of 1986 and NIRC of 1977 dealt with pawnshops and lending investors differently. Verily then, it was the intent of Congress to deal with both subjects differently. Hence, we must likewise interpret the statute to conform to such legislative intent.

Third. Section 116 of the NIRC of 1977, as amended by E.O. No. 273, subjects to percentage tax dealers in securities and lending investors only. There is no mention of pawnshops. Under the maxim expressio unius est exclusio alterius, the mention of one thing implies the exclusion of another thing not mentioned. 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 (Vera v. Fernandez, L-31364, March 30, 1979, 89 SCRA 199, 203). This rule, as a guide to probable legislative intent, is based upon the rules of logic and natural workings of the human mind (Republic v. Estenzo, L-35376, September 11, 1980, 99 SCRA 651, 656).

Fourth. The BIR had ruled several times prior to the issuance of RMO No. 15-91 and RMC No. 43-91 that pawnshops were not subject to the 5% percentage tax imposed by Section 116 of the NIRC of 1977, as amended by E.O. No. 273. This was even admitted by the CIR in RMO No. 15-91 itself. Considering that Section 116 of the NIRC of 1977, as amended, was practically lifted from Section 175 of the NIRC of 1986, as amended, and there being no change in the law, the interpretation thereof should not have been altered.

x x x

x x x R.A. No. 7716 (An Act Restructuring the Value-added Tax (VAT) System, Widening Its Tax Base and Enhancing Its Administrative, and for These Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as amended, and for Other Purposes.) repealed Section 116 of NIRC of 1977, as amended, which was the basis of RMO No. 15-91 and RMC No. 43-91, thus:

x x x

Since Section 116 of the NIRC of 1977, which breathed life on the questioned administrative issuances, had already been repealed, RMO 15-91 and RMC 43-91, which depended upon it, are deemed automatically repealed. Hence, even granting that pawnshops are included within the term lending investors, the assessment from May 27, 1994 onward would have no leg to stand on.

Adding to the invalidity of RMC No. 43-91 and RMO No. 15-91 is the absence of publication. While the rule-making authority of the CIR is not doubted, like any other government agency, the CIR may not disregard legal requirements or applicable principles in the exercise of quasi-legislative powers.

> x x x
>
> RMO No. 15-91 and RMC No. 43-91 cannot be viewed simply as implementing rules or corrective measures revoking in the process the previous rulings of past Commissioners. Specifically, they would have been amendatory provisions applicable to pawnshops. x x x. The due observance of the requirements of notice, hearing, and publication should not have been ignored.
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> x x x
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> In view of the foregoing, RMO No. 15-91 and RMC No. 4391 are hereby declared null and void. Consequently, Lhuillier is not liable to pay the 5% lending investor's tax.[7] (Underscoring supplied)

Under the principle of stare decisis et non quieta movere (follow past precedents and do not disturb what has been settled),[8] it is our duty to apply our previous ruling in Commissioner of Internal Revenue v. Michael J. Lhuillier Pawnshop to the instant case. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner.[9]

In fine, we find no reversible error committed by the Court of Appeals in rendering its assailed Decision.

WHEREFORE, the petition is DENIED. The Decision dated August 29, 2001 of the Court of Appeals in CA-G.R. SP No. 59250 is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Corona, Azcuna, and Garcia, JJ., concur.
Puno, (Chairperson), on leave.

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[1] Penned by Justice Presbitero J. Velasco, Jr. (now a Member of this Court) and concurred in by Justice Ruben T. Reyes (now Presiding Justice) and Justice Juan Q. Enriquez; Rollo, pp. 18-29.

[2] Per Resolution dated March 29 of the Court of Tax Appeals, Petition, Rollo, p. 10.

[3] Annex "B" of Petition, Rollo, pp.30-40.

[4]Petition, Rollo, p. 11.

[5] Annex "A" of Petition, Rollo, pp. 18-29.

[6] G.R. No. 150947, July 15, 2003, 406 SCRA 178. The subject in that case is the Assessment Notice No. 81-PT-13-94-97-9-118 dated September 11, 1997, issued by the Bureau of Internal Revenue against Michael Lhuillier Pawnshop, demanding payment of deficiency percentage tax in the sum of P3,360,335.11 for 1994, inclusive of interest and surcharges.

[7] Ibid, pp. 185-189.

[8]J.M. Tuason & Co., Inc. v. Mariano, No. L-33140, October 23, 1978, 85 SCRA 644, 647; Santiago and Flores v. Valenzuela and Pardo, No. L-670, April 30, 1947, 78 Phil. 397, 410.

[9] Pines City Educational Center v. National Labor Relations Commission, G.R. No. 96779, November 10, 1993, 227 SCRA 655, 665; Associated Sugar, Inc. v. Commissioner of Customs, No. L-30391, November 25, 1982, 118 SCRA 657, 663.

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