AGENCIA EXQUISITE OF BOHOL, INCORPORATED, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 150141. February 12, 2009

Ponente: AZCUNA, J.

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AZCUNA, J.:

Before this Court are three consolidated petitions for review. The first, docketed as G.R. No. 150141, assails the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 59282 dated March 23, 2001 reversing and setting aside the Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 5774, and the CA's Resolution[3] dated September 25, 2001 denying the motion for reconsideration.

The second, docketed as G.R. No. 157359, assails the Decision[4] dated February 6, 2003 of the CA in CA-G.R. SP No. 64117 affirming the Decision[5] of the CTA in CTA Case No. 5990.

Lastly, G.R. No. 158644 assails the Decision[6] of the CA in CA-G.R. SP No. 59401 dated September 30, 2002 reversing and setting aside the Decision[7] and Resolution of the CTA in CTA Case No. 5741, and the CA's Resolution[8] denying the motion for reconsideration.

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

> A restudy of P.D. [No.] 114 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.

The RMO was later clarified by Revenue Memorandum Circular (RMC) No. 43-91 dated May 27, 1991, which reads:

> 1. RM[O] 15-91 dated March 11, 1991.
>
> This Circular subjects to the 5% lending investor's tax the gross income of pawnshops pursuant to Section 116 of the Tax Code, and it thus revokes BIR Ruling No. 6-90, and VAT Ruling Nos. 22-90 and 67-90. In order to have a uniform cut-off date, avoid unfairness on the part of taxpayers if they are required to pay the tax on past transactions, and so as to give meaning to the express provisions of Section 246 of the Tax Code, pawnshop owners or operators shall become liable to the lending investor's tax on their gross income beginning January 1, 1991. Since the deadline for the filing of percentage tax return (BIR Form No. 2529A-0) and the payment of the tax on lending investors covering the first calendar quarter of 1991 has already lapsed, taxpayers are given

> up to June 30, 1991 within which to pay the said tax without penalty. If the tax is paid after June 30, 1991, the corresponding penalties shall be assessed and computed from April 21, 1991.
>
> Since pawnshops are considered as lending investors effective January 1, 1991, they also become subject to documentary stamp taxes prescribed in Title VII of the Tax Code. BIR Ruling No. 325-88 dated July 13, 1988 is hereby revoked.

Pursuant to these issuances, the Bureau of Internal Revenue (BIR) issued Assessment Notice No. 84-PT-13-95-98-5-0-63, dated April 20, 1998, against Agencia Exquisite of Bohol, Inc. (AEBI) demanding payment in the sum of P106,538.59 representing the 5% lending investors' tax for 1995, plus interest and charges.[9]

On June 28, 1998, AEBI filed its Administrative Protest which the BIR Revenue Regional Director denied in a Letter-Decision dated February 3, 1999.[10]

Consequently, AEBI filed with the CTA a Petition for Review, docketed as CTA Case No. 5774. On June 7, 2000, the CTA rendered its Decision in favor of AEBI cancelling Assessment Notice No. 84-PT-13-95-98-5-0-63 and declaring RMO No. 15-91 and RMC No. 43-91, in so far as they classify pawnshops as lending investors subject to 5% lending investors' tax, null and void.

The BIR then sought recourse before the CA in a Petition for Review, docketed as CA-G.R. SP No. 59282. On March 23, 2001, the CA rendered a Decision reversing and setting aside the decision of the CTA, the dispositive portion of which reads:

> x x x
>
> (1)
>
> REVERSING AND SETTING ASIDE the Decision of the Tax Court in CTA Case No. 5774, and,
>
> (2)
>
> Condemning the respondent to pay the amount of Pesos: One Hundred Six Thousand Five Hundred Thirty Eight and Fifty-nine Centavos (P106,538.59), in concept of deficiency percentage tax/lending investor's tax for the year 1995.
>
> Without costs in this instance.
>
> SO ORDERED.[11]

AEBI filed a motion for reconsideration but it was denied in the Resolution dated September 25, 2001.

Aggrieved, AEBI filed the present Petition for Review on Certiorari, docketed as G.R. No. 150141.

As regards G.R. No. 157359, pursuant to RMO No. 15-91 and RMC No. 43-91, on September 25, 1999, the BIR Revenue Regional Director issued Assessment Notice No. 84-PT-13-94-99-9-081 against AEBI demanding the payment of deficiency percentage tax in the sum of P66,373.49 for the year 1994, inclusive of interest and surcharge.[12]

AEBI filed a protest.

In a Letter-Resolution dated November 12, 1999, the Commissioner denied AEBI's protest. Consequently, AEBI filed a petition for review before the CTA, docketed as CTA Case No. 5990, reiterating the arguments it raised in its protest.[13]

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On March 14, 2001, the CTA rendered a Decision[14] in favor of AEBI cancelling Assessment Notice No. 84-PT-13-94-99-9-081 and declaring RMO No. 15-91 and RMC No. 43-91 null and void, in so far as they classify pawnshops as lending investors subject to lending investor's tax.[15]

The Commissioner filed a petition for review before the CA, docketed as CA-G.R. SP No. 64117, arguing that the CTA erred in ruling that pawnshops are not subject to the lending investor's tax. He also invoked the decision of the CA in CA-G.R. SP No. 59282, which held that the definition of the term "pawnshop" is broad enough to encompass lending investors.[16]

On February 6, 2003, the CA rendered a Decision[17] in favor of AEBI and against the Commissioner of Internal Revenue dismissing the appeal and affirming the decision of the CTA. Hence, the present petition.

As regards G.R. No. 158644, pursuant to RMO No. 15-91 and RMC No. 43-91, on May 25, 1998, the BIR Revenue Regional Director issued Assessment Notice No. 80-PT-13-96-98-5-0 against Exquisite Pawnshop and Jewelry, Inc. (EPJI) demanding payment of the sum of P649,255.49, inclusive of interest and surcharge, representing the 5% lending investors' tax for the year 1995.[18]

On June 17, 1998, EPJI filed its Protest[19] but it was denied by the BIR Revenue Regional Director in a Letter[20] dated February 3, 1999.

On March 12, 1999, EPJI filed its petition for review before the CTA, docketed as CTA Case No. 5741, arguing inter alia that: there is no specific provision in the Tax Code and the VAT law which imposes a 5% tax on pawnshops; that pawnshops are different from lending investors; that pawn tickets are not subject to documentary stamp tax; and that RMO No. 15-91 and RMC No. 43-91 are null and void.[21]

On April 24, 2000, the CTA rendered a Decision[22] granting the petition in favor of EPJI and consequently cancelling Assessment Notice No. 80-PT-13-96-98-5-0 and declaring RMO No. 15-91 and RMC No. 43-91 null and void, in so far as they classify pawnshops as lending investors subject to lending investor's tax.[23] The Commissioner filed a Motion for Reconsideration but it was denied in the Resolution dated June 9, 2000.[24]

Aggrieved, the Commissioner sought recourse before the CA in a petition for review,[25] docketed as CA-G.R. SP No. 59401.

On September 30, 2002, the CA rendered a Decision, granting the petition in favor of the Commissioner. The decretal portion of which reads:

> WHEREFORE, premises considered, the instant petition for review is GIVEN DUE COURSE and hereby GRANTED. The decision of the Court of Tax Appeals dated April 24, 2000 and Resolution dated June 9, 2000 of the Tax Court are hereby REVERSED and SET ASIDE. Respondent is hereby ordered to pay the amount of P649,255.49 as 5% deficiency lending investor's tax for the year 1995, plus 25% surcharge and 20% annual interest from June 24, 1998 until fully paid pursuant to Sections 248 and 249 of the Tax Code.
>
> SO ORDERED.[26]

Thus, this petition.

In a Resolution[27] dated August 13, 2003, G.R. No. 150141 G.R. No. 157359 and G.R. No. 158644 were consolidated.

The sole issue for the Court's determination is whether or not pawnshops are liable for the payment of the 5% lending investor's tax.

AEBI and EPJI argue that there are no specific provisions in the Tax Code that subject pawnshops to 5% lending

investor's tax. They claim that there is a big difference between the nature of a pawnshop business and that of a lending investor. They also contend that RMO No. 15-91 and RMC No. 43-91 violate the Constitutional guarantees of due process and equal protection of the laws and that they are unconstitutional as they encroached on the legislative prerogative.[28]

Moreover, AEBI and EPJI argue that applying the principles of stare decisis, this Court in the case of Commissioner of Internal Revenue v. Lhuillier[29] has already held that pawnshops are not considered lending investors for the purpose of imposing the 5% percentage tax. Pursuant to the ruling in the Lhuillier case, the BIR through the Commissioner of Internal Revenue has issued RMC No. 36-2004 ordering the cancellation of all lending investor's tax assessments on pawnshops.[30]

The Court agrees with the contentions of AEBI and EPJI, the issue herein not being a novel one.

In Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.,[31] this Court held that pawnshops are not 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. Thus, 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.

Again, in Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.,[32] this Court reiterated its ruling in Lhuillier that pawnshops are not included in the term lending investors for the purpose of imposing the 5% percentage tax.

The rulings are buttressed by 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;
>
> - 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

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. xxx. The due observance of the requirements of notice, hearing, and publication should not have been ignored.

x x x

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.[33] (Emphasis added)

Under the doctrine of stare decisis et not quieta movere[34] it behooves the Court to apply its previous ruling in Lhuillier and Trustworthy to the cases under consideration. Once a case has been decided one way, any other case

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involving exactly the same point at issue, as in the present consolidated cases, should be decided in the same manner.[35]

Consequently, this Court finds in G.R. No. 157359 that the CA committed no reversible error in dismissing the appeal and affirming the decision of the CTA. However, in G.R. No. 150141 and G.R. No. 158644, pursuant to Lhuillier and Trustworthy, the decisions and resolutions of the CA should be reversed and set aside.

WHEREFORE, the petitions of Agencia Exquisite of Bohol, Inc. and Exquisite Pawnshop and Jewelry, Inc. in G.R. No. 150141 and G.R. No. 158644, respectively, are GRANTED. The Decisions and Resolutions of the Court of Appeals in CA-G.R. SP Nos. 59282 and 59401 are REVERSED and SET ASIDE, and the Decisions of the Court of Tax Appeals in CTA Case Nos. 5774 and 5741 are REINSTATED.

The petition of the Commissioner of Internal Revenue in G.R. No. 157359 is hereby DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 64117 is AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona, and Leonardo-De Castro, JJ., concur.

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[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Bienvenido L. Reyes and Perlita J. Tria Tirona concurring; rollo (G.R. No. 150141), pp. 43-52.

[2] Id. at 54-64.

[3] Id. at 53.

[4] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Portia Aliño-Hormachuelos and Danilo B. Pine concurring; rollo (G.R. No. 157359), pp. 35-43.

[5] Id. at 44-50.

[6] Penned by Associate Justice Bernardo P. Abesamis with Associate Justices Cancio C. Garcia (later Supreme Court Associate Justice) and Rebecca De Guia-Salvador concurring; rollo (G.R. No. 158644), pp. 44-54.

[7] Id. at 58-70.

[8] Id. at 57.

[9] Rollo (G.R. No. 150141), p. 230.

[10] Id.

[11] Id. at 51-52.

[12] Rollo (G.R. No. 157359), p. 225.

[13] Id. at 226.

[14] Id. at 44-50.

[15] Id. at 50.

[16] Id. at 15.

[17] Id. at 35-43.

[18] Rollo (G.R. No. 158644), p. 238.

[19] Id. at 31-34.

[20] Id. at 21-22.

[21] Id. at 61.

[22] Id. at 58-70.

[23] Id. at 70.

[24] Id. at 44.

[25] Id. at 71-85.

[26] Id. at 54.

[27] Rollo (G.R. No. 158644), p. 127.

[28] Rollo (G.R. No. 150141), p. 240.

[29] 453 Phil. 1043, 1054-1059 (2003).

[30] Id.

[31] Id. at 1043. The subject of the case was Assessment Notice No. 81-PT-13-94-97-9-118 dated September 11, 1997, issued by the Bureau of Internal Revenue against Michel Lhuillier Pawnshop, demanding payment of deficiency percentage tax in the sum of P3,360,335.11 for 1994, inclusive of interest and surcharges.

[32] G.R. No. 149834, May 2, 2006, 488 SCRA 538. The subject of the case was Assessment Notice No. 81-PT-13-94-97-6-73 dated June 13, 1997, issued by the Bureau of Internal Revenue against Trustworthy Pawnshop, Inc., demanding payment of deficiency percentage tax in the sum of P2,108,335.19 for 1994, inclusive of interest and surcharges and the additional amount of P93,000.00 as compromise penalty.

[33] Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc., supra note 29.

[34] Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc., supra note 32.

[35] Manila Electric Company, Inc. v. Lualhati, G.R. No. 166769, December 6, 2006, 510 SCRA 455, 471; 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, G.R. No. L-30391, November 25, 1982, 118 SCRA 657, 663.

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