

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MICHEL J. LHUILLIER PAWNSHOP, INC., RESPONDENT.

G.R. No. 150947. July 15, 2003

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

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 (NIRC) of 1977, as amended by Executive Order No. 273?

Petitioner Commissioner of Internal Revenue (CIR) filed the instant petition for review to set aside the decision^[1] of 20 November 2001 of the Court of Appeals in CA G.R. SP No. 62463, which affirmed the decision of 13 December 2000 of the Court of Tax Appeals (CTA) in CTA Case No. 5690 cancelling the assessment issued against respondent Michel J. Lhuillier Pawnshop, Inc. (hereafter Lhuillier) in the amount of P3,360,335.11 as deficiency percentage tax for 1994, inclusive of interest and surcharges.

The facts are as follows:

On 11 March 1991, CIR Jose U. Ong issued Revenue Memorandum Order (RMO) No. 15-91 imposing a 5% lending investor's tax on pawnshops; thus:

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.

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

- 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 tax- payers 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.

On 11 September 1997, pursuant to these issuances, the Bureau of Internal Revenue (BIR) issued Assessment Notice No. 81-PT-13-94-97-9-118 against Lhuillier demanding payment of deficiency percentage tax in the sum of P3,360,335.11 for 1994 inclusive of interest and surcharges.

On 3 October 1997, Lhuillier filed an administrative protest with the Office of the Revenue Regional Director contending that (1) neither the Tax Code nor the VAT Law expressly imposes 5% percentage tax on the gross income of pawnshops; (2) pawnshops are different from lending investors, which are subject to the 5% percentage tax under the specific provision of the Tax Code; (3) RMO No. 15-91 is not implementing any provision of the Internal Revenue laws but is a new and additional tax measure on pawnshops, which only Congress could enact; (4) RMO No. 15-91 impliedly amends the Tax Code and is therefore taxation by implication, which is proscribed by law; and (5) RMO No. 15-91 is a "class legislation" because it singles out pawnshops among other lending and financial operations.

On 12 October 1998, Deputy BIR Commissioner Romeo S. Panganiban issued Warrant of Dstraint and/or Levy No. 81-043-98 against Lhuillier's property for the enforcement and payment of the assessed percentage tax.

Its protest having been unacted upon, Lhuillier, in a letter dated 3 March 1998, elevated the matter to the CIR. Still, the protest was not acted upon by the CIR. Thus, on 11 November 1998, Lhuillier filed a "Notice and Memorandum on Appeal" with the Court of Tax Appeals invoking Section 228 of Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, which provides:

Section 228. Protesting of Assessment. ...

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

The case was docketed as CTA Case No. 5690.

On 19 November 1998, the CIR filed with the CTA a motion to dismiss Lhuillier's petition on the ground that it did not state a cause of action, as there was no action yet on the protest.

Lhuillier opposed the motion to dismiss and moved for the issuance of a writ of preliminary injunction praying that the BIR be enjoined from enforcing the warrant of dstraint and levy.

For Lhuillier's failure to appear on the scheduled date of hearing, the CTA denied the motion for the issuance of a writ of preliminary injunction. However, on Lhuillier's motion for reconsideration, said denial was set aside and a hearing on the motion for the issuance of a writ of preliminary injunction was set.

On 30 June 1999, after due hearing, the CTA denied the CIR's motion to dismiss and granted Lhuillier's motion for the issuance of a writ of preliminary injunction.

On 13 December 2000, the CTA rendered a decision declaring (1) RMO No. 15-91 and RMC No. 43-91 null and void insofar as they classify pawnshops as lending investors subject to 5% percentage tax; and (2) Assessment Notice No. 81-PT-13-94-97-9-118 as cancelled, withdrawn, and with no force and effect.[2]

Dissatisfied, the CIR filed a petition for review with the Court of Appeals praying that the aforesaid decision be reversed and set aside and another one be rendered ordering Lhuillier to pay the 5% lending investor's tax for 1994 with interests and surcharges.

Upon due consideration of the issues presented by the parties in their respective memoranda, the Court of Appeals affirmed the CTA decision on 20 November 2001.

The CIR is now before this Court via this 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. He invokes then Section 116 of the Tax Code, which imposed a 5% percentage tax on lending investors. He argues that the legal definition of lending investors provided in Section 157 (u) of the Tax Code is broad enough to include pawnshop operators. Section 3 of Presidential Decree No. 114 states that the principal business activity of a pawnshop is lending money; thus, a pawnshop easily falls under the legal definition of lending investors. RMO No. 15-91 and RMC No. 43-91, which subject pawnshops to the 5% lending investor's tax based on their gross income, are valid. Being mere interpretations of the NIRC, they need not be published. Lastly, the CIR invokes the case of *Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc.*,^[3] where the Court of Appeals' Special Fourteenth Division ruled that a pawnshop is subject to the 5% lending investor's tax.^[4]

Lhuillier, on the other hand, maintains that before and after the amendment of the Tax Code by E.O. No. 273, which took effect on 1 January 1988, pawnshops and lending investors were subjected to different tax treatments. Pawnshops were required to pay an annual fixed tax of only P1,000, while lending investors were subject to a 5% percentage tax on their gross income in addition to their fixed annual taxes. Accordingly, during the period from April 1982 up to December 1990, the CIR consistently ruled that a pawnshop is not a lending investor and should not therefore be required to pay percentage tax on its gross income.

Lhuillier likewise asserts that RMO No. 15-91 and RMC No. 43-91 are not implementing rules but are new and additional tax measures, which only Congress is empowered to enact. Besides, they are invalid because they have never been published in the Official Gazette or any newspaper of general circulation.

Lhuillier further points out that pawnshops are strictly regulated by the Central Bank pursuant to P.D. No. 114, otherwise known as The Pawnshop Regulation Act. On the other hand, there is no special law governing lending investors. Due to the wide differences between the two, pawnshops had never been considered as lending investors for tax purposes. In fact, in 1994, Congress passed House Bill No. 11197,^[5] which attempted to amend Section 116 of the NIRC, as amended, to include owners of pawnshops as among those subject to percentage tax. However, the Senate Bill and the subsequent Bicameral Committee version, which eventually became the E-VAT Law, did not incorporate such proposed amendment.

Lastly, Lhuillier argues that following the maxim in statutory construction "*expressio unius est exclusio alterius*," it was not the intention of the Legislature to impose percentage taxes on pawnshops because if it were so, pawnshops would have been included as among the businesses subject to the said tax. Inasmuch as revenue laws impose special burdens upon taxpayers, the enforcement of such laws should not be extended by implication beyond the clear import of the language used.

We are therefore called upon to resolve the issue of whether pawnshops are subject to the 5% lending investor's tax. Corollary to this issue are the following questions: (1) Are RMO No. 15-91 and RMC No. 43-91 valid? (2) Were they issued to implement Section 116 of the NIRC of 1977, as amended? (3) Are pawnshops considered "lending investors" for the purpose of the imposition of the lending investor's tax? (4) Is publication necessary for the validity of RMO No. 15-91 and RMC No. 43-91.

RMO No. 15-91 and RMC No. 43-91 were issued in accordance with the power of the CIR to make rulings and opinions in connection with the implementation of internal revenue laws, which was bestowed by then Section 245 of the NIRC of 1977, as amended by E.O. No. 273.^[6] Such power of the CIR cannot be controverted. However, the CIR cannot, in the exercise of such power, issue administrative rulings or circulars not consistent

with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law.[7]

The CIR argues that both issuances are mere rules and regulations implementing then Section 116 of the NIRC, as amended, which provided:

SEC. 116. Percentage tax on dealers in securities; lending investors. - Dealers in securities and lending investors shall pay a tax equivalent to six (6) per centum of their gross income. Lending investors shall pay a tax equivalent to five (5%) percent of their gross income.

It is clear from the aforequoted provision that pawnshops are not specifically included. Thus, the question is whether pawnshops are considered lending investors for the purpose of imposing percentage tax.

We rule in the negative.

Incidentally, we observe that both parties, as well as the Court of Tax Appeals and the Court of Appeals, refer to the National Internal Revenue Code as the Tax Code. They did not specify whether the provisions they cited were taken from the NIRC of 1977, as amended, or the NIRC of 1986, as amended. For clarity, it must be pointed out that the NIRC of 1977 as renumbered and rearranged by E.O. No. 273 is a later law than the NIRC of 1986, as amended by P.D. Nos. 1991, 1994, 2006 and 2031. The citation of the specific Code is important for us to determine the intent of the law.

Under Section 157(u) of the NIRC of 1986, as amended, the term lending investor includes "all persons who make a practice of lending money for themselves or others at interest." A pawnshop, on the other hand, is defined under Section 3 of P.D. No. 114 as "a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably, with pawnbroker or pawn brokerage."

While it is true that pawnshops are engaged in the business of lending money, they are not considered "lending investors" for the purpose of imposing the 5% percentage taxes for the following reasons:

First. Under Section 192, paragraph 3, sub-paragraphs (dd) and (ff), of the NIRC of 1977, 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:

....

(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.

....

(ff) Pawnshops, one thousand pesos (underscoring ours)

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[8] of the NIRC of 1986, which treated both tax subjects differently. Section 175 of the latter Code read as follows:

Sec. 175. Percentage tax on dealers in securities, lending investors. -- Dealers in securities shall pay a tax equivalent to six (6%) percent of their gross income. Lending investors shall pay a tax equivalent to five (5%) percent 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 the 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 with 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.[9] This rule, as a guide to probable legislative intent, is based upon the rules of logic and natural workings of the human mind.[10]

Fourth. The BIR had ruled several times prior to the issuance of RMO No. 15-91 and RMC 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.

It may not be amiss to state that, as pointed out by the respondent, pawnshops was sought to be included as among those subject to 5% percentage tax by House Bill No. 11197 in 1994. Section 13 thereof reads:

Section 13. Section 116 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"SEC. 116. Percentage tax on dealers in securities; lending investors; OWNERS OF PAWNSHOPS; FOREIGN CURRENCY DEALERS AND/OR MONEY CHANGERS. - Dealers in securities shall pay a tax equivalent to Six (6%) per centum of their gross income. Lending investors, OWNERS OF PAWNSHOPS AND FOREIGN CURRENCY DEALERS AND/OR MONEY CHANGERS shall pay a tax equivalent to Five (5%) percent of their gross income."

If pawnshops were covered within the term lending investor, there would have been no need to introduce such amendment to include owners of pawnshops. At any rate, such proposed amendment was not adopted. Instead, the approved bill which became R.A. No. 7716[11] repealed Section 116 of NIRC of 1977, as amended, which was the basis of RMO No. 15-91 and RMC No. 43-91; thus:

SEC. 20. Repealing Clauses. -- The provisions of any special law relative to the rate of franchise taxes are hereby expressly repealed. Sections 113, 114 and 116 of the National Internal Revenue Code are hereby repealed.

Section 21 of the same law provides that the law shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation whichever comes earlier. R.A. No. 7716 was published in the Official Gazette on 1 August 1994[12]; in the Journal and Malaya newspapers, on 12 May 1994; and in the Manila Bulletin, on 5 June 1994. Thus, R.A. No. 7716 is deemed effective on 27 May 1994.

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 27 May 1994 onward would have no leg to stand on.

Adding to the invalidity of the 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.

Let us first distinguish between two kinds of administrative issuances: the legislative rule and the interpretative rule. A legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. An interpretative rule, on the other hand, is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.[13]

In *Misamis Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary*,^[14] this Tribunal ruled:

... In the same way that laws must have the benefit of public hearing, it is generally required that before a legislative rule is adopted there must be hearing. In this connection, the Administrative Code of 1987 provides:

Public Participation. - If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2)

In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two weeks before the first hearing thereon.

(3) In case of opposition, the rules on contested cases shall be observed.

In addition, such rule must be published.

When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.[15]

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. Without these disputed CIR issuances, pawnshops would not be liable to pay the 5% percentage tax, considering that they were not specifically included in Section 116 of the NIRC of 1977, as amended. In so doing, the CIR did not simply interpret the law. The due observance of the requirements of notice, hearing, and publication should not have been ignored.

There is no need for us to discuss the ruling in *CA-G.R. SP No. 59282* entitled *Commissioner of Internal Revenue v. Agencia Exquisite of Bohol Inc.*, which upheld the validity of RMO No. 15-91 and RMC No. 43-91. Suffice it to say that the judgment in that case cannot be binding upon the Supreme Court because it is only a decision of the Court of Appeals. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[16]

In view of the foregoing, RMO No. 15-91 and RMC No. 43-91 are hereby declared null and void. Consequently, Lhuillier is not liable to pay the 5% lending investor's tax.

WHEREFORE, the petition is hereby DISMISSED for lack of merit. The decision of the Court of Appeals of 20 November 2001 in CA-G.R. SP No. 62463 is AFFIRMED.

SO ORDERED.

Vitug, Ynarez-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, 18-24. Per Associate Justice Edgardo P. Cruz, with then Presiding Justice (now Supreme Court Associate Justice) Alicia Austria-Martinez and Associate Justice Hilarion L. Aquino concurring.

[2] Rollo, 25-33. Per Associate Judge Ramon O. de Veyra, with Presiding Judge Ernesto D. Acosta and Associate Judge Amancio Q. Saga concurring.

[3] CA-G.R. SP No. 59282, 23 March 2001.

[4] Rollo, 35-44.

[5] Entitled An Act Restructuring the Value-Added Tax (VAT) System to Widen its Tax Base and Enhance its Administration, Amending for These Purposes Sections ... 116 of Title V ... of the National Internal Revenue Code, as Amended.

[6] Now Sections 244 and 245 of R.A. No. 8424, otherwise known as the Tax Reform Act of 1997.

[7] Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 108358, 20 January 1995, 240 SCRA 368, 372; Romulo, Mabanta, Buenaventura, Sayoc & De los Angeles v. Home Development Mutual Fund, G.R. No. 131082, 19 June 2000; 333 SCRA 777, 786.

[8] Formerly Section 209 of the NIRC of 1977, as amended by P.D. No. 1739 of 17 September 1980, which read:

Section 209. - Percentage tax on dealers in securities, lending investors. - Dealers in securities and lending investors shall pay a tax equivalent to five per centum on their gross income.

[9] Vera v. Fernandez, L-31364, 30 March 1979; 89 SCRA 199, 203.

[10] Republic v. Estenzo, L-35376, 11 September 1980; 99 SCRA 651, 656.

[11] Entitled An Act Restructuring the Value-added Tax (VAT) System, Widening Its Tax Base and Enhancing Its Administration, and for These Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as amended, and for Other Purposes.

[12] 90 O.G. 31, 4489.

[13] Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary, G.R. No. 108524, 10 November 1994, 238 SCRA 63, 69.

[14] Supra.

[15] Commissioner of Internal Revenue v. Court of Appeals, 329 Phil. 987, 1007 [1996].

[16] GSIS v. Court of Appeals, 334 Phil. 163, 175 [1997], citing Ang Ping v. RTC of Manila, Br. 40, G.R. No. L-75860, 17 September 1987, 154 SCRA 77 and Tugade v. Court of Appeals, G.R. L-47772, 31 August 1978, 85

SCRA 226.

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