

## **FIRST DIVISION**

**[ G.R. No. 150141, February 12, 2009 ]**

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

**[G.R. No. 157359]**

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

**[G.R. No. 158644]**

**EXQUISITE PAWNSHOP AND JEWELRY, INC., PETITIONER, VS.  
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

### **DECISION**

**AZCUNA, J.:**

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

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

Lastly, G.R. No. 158644 assails the Decision<sup>[6]</sup> of the CA in CA-G.R. SP No. 59401 dated September 30, 2002 reversing and setting aside the Decision<sup>[7]</sup> and Resolution of the CTA in CTA Case No. 5741, and the CA's Resolution<sup>[8]</sup> 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.<sup>[9]</sup>

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

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:

(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.<sup>[11]</sup>

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.<sup>[12]</sup>

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.<sup>[13]</sup>

On March 14, 2001, the CTA rendered a Decision<sup>[14]</sup> 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.<sup>[15]</sup>

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.<sup>[16]</sup>

On February 6, 2003, the CA rendered a Decision<sup>[17]</sup> 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.<sup>[18]</sup>

On June 17, 1998, EPJI filed its Protest<sup>[19]</sup> but it was denied by the BIR Revenue Regional Director in a Letter<sup>[20]</sup> 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.<sup>[21]</sup>

On April 24, 2000, the CTA rendered a Decision<sup>[22]</sup> 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.<sup>[23]</sup> The Commissioner filed a Motion for Reconsideration but it was denied in the Resolution dated June 9, 2000.<sup>[24]</sup>

Aggrieved, the Commissioner sought recourse before the CA in a petition for review,<sup>[25]</sup> 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.<sup>[26]</sup>

Thus, this petition.

In a Resolution<sup>[27]</sup> 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.<sup>[28]</sup>

Moreover, AEBI and EPJI argue that applying the principles of *stare decisis*, this Court in the case of *Commissioner of Internal Revenue v. Lhuillier*<sup>[29]</sup> 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.<sup>[30]</sup>

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.*,<sup>[31]</sup> 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.*,<sup>[32]</sup> 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** -

1. In chartered cities and first class municipalities, one thousand pesos;
2. In second and third class municipalities, five hundred pesos;
3. 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