

SECOND DIVISION

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

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

DECISION

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** -

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 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