

FIRST DIVISION

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

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

D E C I S I O N

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:

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.

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 distraint 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.