

## THIRD DIVISION

[ G.R. No. 113459, November 18, 2002 ]

COMMISSIONER OF INTERNAL REVENUE PETITIONER, VS.  
JOSEFINA LEAL, RESPONDENT.

### D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Pursuant to Section 116 of Presidential Decree No. 1158,<sup>[1]</sup> (The National Internal Revenue Code of 1977, as amended [Tax Code for brevity]), which provides:

"SEC. 116. **Percentage tax on dealers in securities; lending investors.**  
– Dealers in securities shall pay a tax equivalent to six (6%) per centum of their gross income. **Lending investors shall pay a tax equivalent to five (5%) per cent of their gross income.**" (emphasis added)

the Commissioner of Internal Revenue, petitioner, issued Revenue Memorandum Order (RMO) No. 15-91 dated March 11, 1991,<sup>[2]</sup> imposing 5% lending investor's tax on pawnshops based on their gross income and requiring all investigating units of the Bureau of Internal Revenue (BIR) to investigate and assess the lending investor's tax due from them. The issuance of RMO No. 15-91 was an offshoot of petitioner's evaluation that the nature of pawnshop business is akin to that of "lending investors," which term is defined in Section 157 (u) of the Tax Code in this wise:

"(u) Lending investors include all persons who make a practice of **lending money** for themselves or others **at interests.**"

Subsequently, petitioner issued Revenue Memorandum Circular (RMC) No. 43-91 dated May 27, 1992,<sup>[3]</sup> subjecting the pawn ticket to the documentary stamp tax as prescribed in Title VII of the Tax Code.

Adversely affected by those revenue orders, herein respondent Josefina Leal, owner and operator of Josefina's Pawnshop in San Mateo, Rizal, asked for a reconsideration of both RMO No. 15-91 and RMC No. 43-91 but the same was denied with finality by petitioner in its BIR Ruling No. 221-91 dated October 30, 1991.<sup>[4]</sup>

Consequently, on March 18, 1992, respondent filed with the Regional Trial Court (RTC), Branch 75, San Mateo, Rizal, a petition for prohibition, docketed as Civil Case No. 849-92,<sup>[5]</sup> seeking to prohibit petitioner from implementing the revenue orders.

Petitioner, through the Office of the Solicitor General, filed a motion to dismiss<sup>[6]</sup> the petition on the ground that the RTC has no jurisdiction to review the questioned revenue orders and to enjoin their implementation. Petitioner contends that the subject revenue orders were issued pursuant to his power "to make rulings or opinions in connection with the implementation of the provisions of internal revenue

laws.”<sup>[7]</sup> Thus, the case falls within the exclusive appellate jurisdiction of the Court of Tax Appeals, citing Section 7 (1) of Republic Act No. 1125.<sup>[8]</sup>

The RTC, through then Presiding Judge Andres B. Reyes, Jr.,<sup>[9]</sup> issued an order on April 27, 1992<sup>[10]</sup> denying the motion to dismiss, holding that the revenue orders are **not assessments to implement a Tax Code provision**, but are “in effect **new taxes** (against pawnshops) **which are not provided for under the Code**,” and which only Congress is empowered to impose.

Petitioner then filed with the Court of Appeals a petition for *certiorari* and prohibition under Rule 65 of the Revised Rules of Court (now 1997 Rules of Civil Procedure, as amended), docketed as CA-G.R. SP No. 28824. Petitioner alleged that in denying the motion to dismiss, the RTC Judge acted without or in excess of his jurisdiction, or with grave abuse of discretion. In its Decision dated December 23, 1993, the Court of Appeals dismissed the petition “for lack of legal basis”<sup>[11]</sup> and ruled that “the (RTC) order denying the motion to dismiss is subject to **immediate challenge** before the **Supreme Court** (**not** the Court of Appeals), which is the **sole authority** to determine and resolve an issue purely of law pursuant to Section 5, Article VIII of the 1987 Constitution.”<sup>[12]</sup> Nonetheless, the Court of Appeals resolved the case on the merits, sustaining the RTC ruling that the questioned revenue orders are “new additional measures which only Congress is empowered to impose.”<sup>[13]</sup>

Hence, the instant petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues:

1. WHETHER THE COURT OF APPEALS HAS JURISDICTION OVER A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT WHERE THE AUTHORITY OF THE REGIONAL TRIAL COURT TO REVIEW THE SUBJECT REVENUE ORDERS IS BEING QUESTIONED;

2. WHETHER IT IS THE RTC OR THE COURT OF TAX APPEALS WHICH HAS JURISDICTION OVER THE INSTANT CASE.

Anent the first issue, petitioner contends that the Court of Appeals has “original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus* and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction,” pursuant to Section 9(1) of Batas Pambansa Blg. 129. Petitioner thus claims that his petition for *certiorari* filed with the Court of Appeals pursuant to Rule 65 of the Rules of Court is the proper recourse to assail the RTC order denying his motion to dismiss.

Petitioner’s contention is meritorious. The Court of Appeals erred in holding that it has no jurisdiction over petitioner’s special civil action for *certiorari* under Rule 65 of the Rules. While this Court exercises original jurisdiction to issue the extraordinary writ of *certiorari* (as well as the writs of prohibition, *mandamus*, *quo warranto*, and *habeas corpus*),<sup>[14]</sup> such power is **not exclusive** to this Court but is **concurrent** with the Court of Appeals<sup>[15]</sup> and the Regional Trial Courts.<sup>[16]</sup> We reiterate our pronouncement on this issue in *Morales vs. Court of Appeals*:<sup>[17]</sup>

“Under Section 9 (1) of B.P. Blg. 129, the **Court of Appeals** has **concurrent original** jurisdiction with the **Supreme Court** pursuant to Section 5 (1) of Article VIII of the Constitution and Section 17 (1) of the

Judiciary Act of 1948, and with the **Regional Trial Court** pursuant to Section 21 (1) of B.P. Blg. 129 to issue writs of *certiorari*, *mandamus*, prohibition, *habeas corpus*, and *quo warranto*. These are **original actions**, not **modes of appeals**.

"Since what the petitioner filed in CA-G.R. SP No. 40670 was a **special civil action for *certiorari* under Rule 65**, the **original jurisdiction of the Court of Appeals thereon is beyond doubt**.

"This error of the Court of Appeals was due to its misapplication of Section 5 (2) (c) of Article VIII of the Constitution and of that portion of Section 17 of the Judiciary Act of 1948 vesting upon the Supreme Court exclusive jurisdiction to review, revise, reverse, modify, or affirm on *certiorari* as the law or rules of court may provide, **final** judgments and decrees of inferior courts in all cases in which the jurisdiction of any inferior court is in issue. It forgot that this constitutional and statutory provisions pertain to the **appellate** – not **original** – jurisdiction of the Supreme Court, as correctly maintained by the petitioner. An **appellate jurisdiction** refers to a process which is but a continuation of the original suit, **not** a commencement of a **new action, such as that of a special civil action for *certiorari***. The general rule is that a denial of a motion to dismiss or to quash in criminal cases is **interlocutory** and cannot be the subject of an appeal or of a special civil action for *certiorari*. Nevertheless, **this Court has allowed a special civil action for *certiorari* where a lower court has acted without or in excess of jurisdiction or with grave abuse of discretion in denying a motion to dismiss or to quash. The petitioner believed that the RTC below did so; hence, the special civil action for *certiorari* before the Court of Appeals appeared to be the proper remedy.**"  
(emphasis added)

Such concurrence of original jurisdiction among the Regional Trial Court, the Court of Appeals and this Court, however, does not mean that the party seeking any of the extraordinary writs has the absolute freedom to file his petition in the court of his choice. The **hierarchy of courts** in our judicial system determines the appropriate forum for these petitions. Thus, petitions for the issuance of the said writs against the first level (inferior) courts must be filed with the Regional Trial Court and those against the latter, with the Court of Appeals. A direct invocation of this Court's original jurisdiction to issue these writs should be allowed only where there are special and important reasons therefor, specifically and sufficiently set forth in the petition. This is the established policy to prevent inordinate demands upon the Court's time and attention, which are better devoted to matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.<sup>[18]</sup> Thus, it was proper for petitioner to institute the special civil action for *certiorari* with the Court of Appeals assailing the RTC order denying his motion to dismiss based on lack of jurisdiction.

While the Court of Appeals correctly took cognizance of the petition for *certiorari*, however, let it be stressed that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not to the RTC.