

THIRD DIVISION

[G.R. No. 172394, October 13, 2010]

**H. TAMBUNTING PAWNSHOP, INC., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

DECISION

BERSAMIN, J.:

The issue herein is whether the petitioner, a pawnshop operator, was liable for VAT and the compromise penalty for taxable year 2000.

On August 29, 2003, petitioner H. Tambunting Pawnshop, Inc. (Tambunting), a domestic corporation duly licensed to engage in the pawnshop business, received an assessment notice dated August 27, 2003 from the Bureau of Internal Revenue (BIR), demanding the payment of deficiency Value-Added Tax (VAT) and compromise penalty for taxable year 2000 in the amounts of P5,212,404.52 and P25,000, respectively.

On September 15, 2003, Tambunting, disclaiming its liability, protested the assessment with the respondent Commissioner of Internal Revenue (CIR), arguing that a pawnshop business was not subject to VAT and the compromise penalty.^[1]

Due to the inaction of the CIR on the protest, Tambunting filed on April 2, 2004 its petition for review with the Court of Tax Appeals (CTA) pursuant to Section 228 of Republic Act No. 8424 (*National Internal Revenue Code or Tax Reform Act of 1997*).^[2]

In a decision dated April 11, 2005, ^[3] the CTA Second Division denied the petition for review, to wit:

WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, petitioner is hereby ORDERED to pay respondent Commissioner of Internal Revenue the deficiency VAT for taxable year 2000 in the amount of PhP 5,212,404.52, plus 25% surcharge and 20% delinquency interest per annum from September 29, 2003 until fully paid, pursuant to Section 248 and 249 of the NIRC of 1997, as amended.

The amount of PhP25,000 imposed by way of compromise penalty is hereby DELETED.

SO ORDERED.

On April 29, 2005, Tambunting filed a *motion for partial reconsideration*.^[4] Later on, on May 26, 2005, Tambunting submitted a written *manifestation*, attaching a copy of Bureau of Internal Revenue (BIR) tax payment deposit slip (BIR Form No. 0605) and the corresponding schedule evidencing its payment of P828,809.67 for the years from 2000 to 2002 pursuant to a settlement agreement with BIR allowing Tambunting to pay 25% of its VAT due.^[5]

On July 14, 2005, however, the CTA Second Division denied Tambunting's *motion for partial reconsideration* in a resolution dated July 14, 2005.^[6]

On August 22, 2005, Tambunting appealed by *petition for review* to the CTA *en banc*.^[7]

On March 21, 2006, the CTA *en banc* rendered its assailed decision,^[8] disposing thus:

WHEREFORE, the Court *en banc* finds no reversible error to warrant the reversal of the assailed Decision promulgated on April 11, 2005 and the Resolution dated July 14, 2005, respectively.

Accordingly, the instant Petition for Review is hereby DENIED and the assailed Decision and Resolution are AFFIRMED in toto.

SO ORDERED.

The CTA *en banc* denied Tambunting's *motion for reconsideration* on April 18, 2006.^[9]

Hence, Tambunting has appealed, insisting that:

THE CTA EN BANC'S DECISION OF 21 MARCH 2006 AND RESOLUTION DATED 18 APRIL 2006 ARE NOT IN ACCORDANCE WITH LAW AND SETTLED JURISPRUDENCE ON THE MATTER.

Tambunting's main argument is that pawnshops are not within the concept of "all services" and "similar services" as provided in Section 108 (A) of the *National Internal Revenue Code*.^[10] Tambunting also argues that the enumeration under Section 108(A) of the *National Internal Revenue Code* of services subject to VAT is exclusive.

The petition has merit.

It is now settled that for purposes of determining their tax liability, pawnshops are treated as non-bank financial intermediaries.^[11]

The VAT on non-bank financial intermediaries was first levied under R.A. No. 7716

(*Expanded Value-Added Tax Law*), where Sections 3 and 17 thereof provide:

Section 3. Section 102 of the National Internal Revenue, as amended is hereby further amended to read as follows:

Section 102. *Value-added tax on sale of services and use or lease of properties.*- There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase `sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration x x x

x x x services of banks, **non-bank financial intermediaries** and finance companies; x x x

Section 17. *Effectivity of the Imposition of VAT on Certain Goods, Properties and Services.*- The value-added tax shall be levied assessed and collected on the following transactions, two (2) years after the effectivity of this Act:

x x x

(b) Services rendered by banks, nonbank financial intermediaries, finance companies and other financial companies and other financial intermediaries not performing quasi-banking functions; x x x

However, Section 11 of R.A. No. 8241 amended Section 17 of R.A. No. 7716 to move the effectivity of the VAT on non-bank financial intermediaries to January 1, 1998, viz:

Section 11. Section 17 of Republic Act No. 7716 is hereby amended to read as follows:

Section 17. *Effectivity of the Imposition of VAT on Certain Goods, Properties and Services.*- The value-added tax shall be levied assessed and collected on the following transactions starting **January 1, 1998**:

x x x

(b) Services rendered by banks, nonbank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions; x x x

Later, R.A. No. 8424 (*National Internal Revenue Code or Tax Reform Act of 1997*) again moved the effectivity of the imposition of the VAT to December 31, 1999, to wit:

Section 5. *Transitory Provisions- Deferment of the Effectivity of the Imposition of VAT on Certain Services.*- The effectivity of the imposition of the value-added tax on services as prescribed in Section 17(a) and (b) of Republic Act No. 7716, as amended by Republic Act No. 8241, is hereby further deferred until **December 31, 1999**, unless Congress deems otherwise: Provided, That the said services shall continue to pay the applicable tax prescribed under the present provisions of the National Internal Revenue Code, as amended.

Still later, R.A. No. 8761 retarded the effectivity of the VAT on non-bank financial intermediaries to January 1, 2001, thus:

Section 1. Section 5 of Republic Act No. 8424 is hereby amended to read as follows:

Section 5. *Transitory Provisions- Effectivity of the Imposition of VAT on Certain Services.*- The imposition of the value-added tax on the following services shall take effect on **January 1, 2001**:

x x x

(b) Services rendered by banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions; x x x

Lastly, R.A. No. 9010 revised the effectivity of the VAT on non-bank financial intermediaries by making it start on January 1, 2003:

Section 1. Section 5 of Republic Act No. 8424 as amended by Republic Act No. 8761 is hereby further amended to read as follows:

Section 5. *Transitory Provisions- Effectivity of the Imposition of VAT on Certain Services.*- The imposition of the value-added tax on the following services shall take effect on **January 1, 2003**:

x x x

(b) Services rendered by banks, non-bank financial intermediaries, finance companies, and other financial intermediaries not performing quasi-banking functions; x x x

Accordingly, the consecutive deferments of the effectivity date of the application of VAT on non-bank financial intermediaries like pawnshops resulted in their non-liability for VAT during the affected taxable years. Specifically, in *First Planters Pawnshop, supra*, the Court ruled on the VAT liability of pawnshops for taxable years from 1996 to 2002, holding: