REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SOUTHERN LUZON DRUG CORPORATION, Petitioner,	**C.T.A. CASE NO. 7208**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 3 0 2007

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review seeks the issuance of a tax credit certificate in the amount of P7,397,949.35, representing twenty percent (20%) sales discounts allegedly granted to senior citizens on their purchases of medicines from petitioner during taxable year 2002, pursuant to Republic Act (R.A.) No. 7432.[1]

Southern Luzon Drug Corporation (Petitioner) is a domestic corporation organized and existing under the laws of the Philippines with principal office

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[1] "An Act To Maximize The Contribution Of Senior Citizen To Nation Building, Grant Benefits And Special Privileges And For Other Purposes"

(747)

address at No. 7 Mercury Avenue, Bagumbayan, Quezon City.[2] In 2002, it operated seven (7) drug stores which were duly licensed by the Bureau of Food and Drugs (BFAD), the Department of Trade and Industry, the Bureau of Internal Revenue (BIR), and the local government units where its drugstores are located.

On various dates, during the period from January to December 2002, petitioner purportedly granted twenty percent (20%) sales discounts in the amount of P7,397,949.35 to qualified senior citizens on their purchases of medicines from petitioner, in compliance with Republic Act No. 7432 and its Implementing Rules and Regulations.

In its 2002 Income Tax Return (ITR) filed with the BIR on April 15, 2003,[3] petitioner treated the 20% sales discount of P7,397,949.35 as prepaid tax credit by declaring as creditable tax withheld for the first three quarters the amount of P5,142,845 and creditable tax withheld for the fourth quarter the amount of P2,255,105, as shown below:

Sales/ Revenues/ Receipts/ Fees (Sch.1)	P230,456,682
Less: Cost of Sales/ Services (Sch.2/3)	208,178,196
Gross Income from Operation	P 22,278,486
Add: Non-Operating & Other Income (Sch.4)	948,241
Total Gross Income	P23,226,727
Less: Deductions (Section E)	23,567,707
Taxable Income	P(340,980)
Tax Rate (except MCIT Rate)	32%
Income Tax	P(109,114)
Minimum Corporate Income Tax (MCIT) (Section B)	P 445,570
Tax Due	P445,570
Less: Tax Credits/ Payments	
Prior Year's Excess Credits	P 7,994,822
Creditable Tax Withheld for the First Three Quarters	**5,142,845**
Creditable Tax Withheld Per BIR Form No.2307 for the Fourth Quarter	**2,255,105**
Total Tax Credits/ Payments	P15,392,772

[2] Transcript of Stenographic Notes (TSN) dated July 21, 2005, page 4
[3] Exhibit "C"

On April 13, 2005, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of P7,397,949.35, equivalent to the 20% sales discounts allegedly granted by petitioner to qualified senior citizens in 2002.[4]

On April 14, 2005, petitioner elevated its claim before this Court by filing this Petition for Review. As of the date of the filing of this Petition, respondent has not granted petitioner's request for a tax credit certificate.

The parties proposed the following issues for the Court's decision:

1. Whether the 20% sales discount granted to senior citizens on their purchase of medicines should be treated as tax credit deductible from the tax due as provided under RA 7432 or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94;

2. Whether or not petitioner actually granted and is entitled to the issuance of a tax credit certificate in a total amount of P7,397,949.35 representing the 20% sales discounts it granted to senior citizens on their purchases of medicines in the year 2002.

The first issue stemmed out of the difference between Section 4(a) of R.A. No. 7432 and Sections 2(i) and 4 of Revenue Regulations No. 2-94, quoted herein as follows:

R.A. No. 7432

> **SECTION 4.** *Privileges for the Senior Citizens.* — The senior citizens shall be entitled to the following:
>
> a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: *Provided*, That **private establishments may claim the cost as tax credit**; *(Emphasis supplied)*

Jc

[4] Exhibit "E"

> <u>*Revenue Regulations No. 2-94*</u>
>
> **SECTION 2.** *Definitions.* — For purposes of these regulations:
>
> x x x
>
> *i. Tax Credit* — refers to the amount representing the 20% discount granted to a qualified senior citizen by all establishments relative to their utilization of transportation services, hotels and similar lodging establishments, restaurants, drugstores, recreation centers, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, which **discount shall be deducted by the said establishments from their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes**. *(Emphasis supplied)*
>
> x x x
>
> **SECTION 4.** *Recording/Bookkeeping Requirement for Private Establishments.* — Private establishments, *i.e.*, transport services, hotels and similar lodging establishments, restaurants, recreation centers, drugstores, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, giving 20% discounts to qualified senior citizens are required to keep separate and accurate record of sales made to senior citizens, which shall include the name, identification number, gross sales/receipts, discounts, dates of transactions and invoice number for every transaction.
>
> **The amount of 20% discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of the VAT and other percentage taxes**. *(Emphasis supplied)*

Section 4(a) of R.A. No. 7432 grants to qualified senior citizens 20% discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicine anywhere in the country; with a proviso that **private establishments may claim the cost as tax credit**.

On the other hand, Sections 2(i) and 4 of Revenue Regulations No. 2-94 provide that **the sales discounts shall be deducted by the said establishments from their gross income** for income tax purposes **and from their gross sales** for value-added tax or other percentage tax purposes.

This Court, however, has consistently held that the 20% sales discounts granted to qualified senior citizens should be treated as tax credit and not as mere deductions from gross income.[5]

In **Del Rosario Drug Corporation vs. Commissioner of Internal Revenue,**[6] this Court declared:

> "A cursory review of the wordings of Section 4 of Republic Act No.7432 would reveal that the law literally intended the cost of the 20% discount to be claimed as tax credit by private establishments. We could not see any plausible reason for the respondent to interpret the phrase in a different way. The discount being available for tax credit as stated in the law cannot be made incoherent to mean that such discount be utilized instead as a deduction from gross income and from gross sales as what is provided in RR No. 2-94.
>
> To be valid, an administrative regulation must not be in contravention but should conform to the standards that the law prescribes. (Tayug Rural Bank vs. Central Bank, 146 SCRA 12). Its promulgation must be authorized by the legislature. (Philippine Administrative Law, Cruz, 1994 ed., p.32)
>
> RR No. 2-94 which engraved a new meaning to the phrase 'tax credit' as referring to the 20% discount which is deductible from gross sales is patently incongruous and a deviation from the plain intendment of the law. It is even repugnant to the common dictionary acceptation of said phrase.
>
> Black's Law Dictionary, 6th ed., defines tax credit in this wise:

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[5] Baliuag Drug Corp. v. Commissioner of Internal Revenue, *C.T.A. Case No. 6537, November 25, 2004*, quoting the Decision of the CTA in the case of Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, *C.T.A. Case No. 5357, April 6, 1998.*

[6] *CTA Case No. 5357, April 6, 1998*

> An amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability. A tax credit reduces the taxpayer's liability dollar for dollar, compared to a deduction which reduces taxable income upon which the tax liability is calculated. *A credit differs from deduction to the extent that the former is subtracted from the tax while the latter is subtracted from income before the tax is computed.* (Emphasis supplied)

Under RR No.2-94, respondent has interpreted tax credit as synonymous to tax deduction in glaring contradiction to the above definition. Undoubtedly, there is a clear distinction, nay, difference between the two terms.

Under these circumstances, the law should reign supreme over subordinate rules and regulations where the provisions of the latter are not in accord with the former. It is clearly provided in Section 4(a) of RA 7432 that the cost of the 20% discount granted by private establishments may be claimed by the latter as tax credit and not as a deduction contrary to what has been declared in Revenue Regulations No.2-94. In case of conflict between a statute and an administrative order, the former must prevail. (Kilusang Mayo Uno vs. Garcia, Jr., 239 SCRA 386) Furthermore, the legal issue in this petition has already been settled in the case entitled Sto. Rosario Drug vs. Commissioner of Internal Revenue, CTA Case No. 5367, dated February 16, 1998.

In declaring that the provisions of RA 7432 prevail over Revenue Regulations No. 2-94, it is important to point out that the cost of the 20% discount shall not be treated as deduction from the gross income of the petitioner nor deducted from its gross sales for VAT or other percentage tax purposes. The benefit that can be derived by taxpayers is the privilege of claiming these discounts as tax credit and no longer as deductions as what other taxpayers have done. They cannot avail of tax credit and claim said discounts as deductions at the same time because this would be tantamount to granting them benefits that are already disproportionate to the obligations imposed upon them by virtue of said law. This is to make clear for both the taxpayers and respondent that the tax credit privilege takes the place of claiming these discounts as deductions pursuant to this Court's stand that Section 2(i) of Revenue Regulations No.2-94 is null and void and it is Section 4(a) of RA 7432 that will apply in case of this nature."

The above ruling received affirmation when the Supreme Court ruled in **Commissioner of Internal Revenue vs. Central Luzon Drug Corporation**,[7] that:

> "**The 20 percent discount required by law to be given to senior citizens is a *tax credit***, not merely a *tax deduction* from the gross income or gross sale of the establishment concerned. A *tax credit* is used by a private establishment only after the tax has been computed; a *tax deduction*, before the tax is computed. **RA 7432 unconditionally grants a *tax credit* to all covered entities. Thus, the provisions of the revenue regulation that withdraw or modify such grants are void. Basic is the rule that administrative regulations cannot amend or revoke the law**." (*Emphasis supplied*)

Besides, the High Tribunal already declared in the case of **Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (formerly known as Elmas Drug Co.)** that Revenue Regulations No. 2-94 is void for its failure to conform to the law it sought to implement.[8] Based on the foregoing, the 20% sales discounts granted to qualified senior citizens must be treated as tax credits pursuant to R.A. No. 7432, not deductions from gross income as provided in Revenue Regulations No. 2-94.

Having settled the legal issue, the next question posed is whether petitioner was able to sufficiently prove the factual aspect of its claim for tax credit.

To prove that it actually granted the 20% sales discounts to qualified senior citizens, petitioner presented its *Summary of Sales (Net) for 2002*,[9] *Summary of Sales Discount* for 2002,[10] cash slips evidencing the purchases

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[7] *G.R. No. 159647, April 15, 2005*
[8] *G.R. No. 148083, July 21, 2006*
[9] Exhibit "M"
[10] Exhibit "N"

of medicines by senior citizens for 2002,[11] and sample *BIR and BFAD Special Record Books* prepared by petitioner's drug stores for 2002, consisting of twenty-eight (28) volumes.[12]

The auditing firm, Tato, Gison, Tan & Co., CPA's, through its Partner, Ms. Laura Gison, was commissioned by this Court pursuant to CTA Circular 1-95, as amended, to verify petitioner's claim. The total sales discounts given to senior citizens for the year 2002 are summarized as follows:

		Branch	Amount per Book	Amount per Audit	Variance
1	581	Ultimart San Pablo	1,976,617.53	1,965,468.49	11,149.04
2	592	Caedo, Batangas	2,310,854.74	1,745,197.96	565,656.78
3	615	Bauan, Batangas	1,283,796.81	1,446,418.34	(162,621.53)
4	619	Lopez, GV Vera	437,468.66	440,633.51	(3,164.85)
5	629	Nasugbu, Batangas	546,699.44	512,794.79	33,904.65
6	630	Puerto Princesa	325,092.04	321,909.12	3,182.92
7	634	Pinamalayan	346,892.98	340,434.38	6,458.60
		Total	**7,227,422.19**	**6,772,856.58**	**454,565.61**

After a thorough examination of the various cash slips, in relation to petitioner's *Summary of Sales and Discounts for Senior Citizens* and the *Special Record Books* for 2002, the Court finds the report of the commissioned independent CPA to be in order. It is observed though that in the said report,[13] the 20% sales discount granted to qualified senior citizens for the years 2002 wherein the required details for the issuance of cash slips are complete, amounted only to P6,772,856.58. Likewise, the audited amount of 20% sales discount exceeded the amount per books by P165,786.38 coming from the following branches:

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[11] Exhibit "S"
[12] Exhibit "R"
[13] Exhibit "T"

		Branch	Amount per Book	Amount per Audit	Variance
3	615	Bauan, Batangas	1,283,796.81	1,446,418.34	(162,621.53)
4	619	Lopez, GV Vera	437,468.66	440,633.51	(3,164.85)
		Total	**1,721,265.46**	**1,887,051.84**	**(165,786.38)**

Such being the case, the substantiated amount of P6,772,856.58 should be reduced by P165,786.38, thus, leaving only P6,607,070.20 as the proper subject of petitioner's claim.

To be entitled to the claim sought, however, petitioner must first establish that the gross sales made to senior citizens (inclusive of the 20% sales discount) were declared as part of its taxable income. After a careful review of the available documents, the Court finds that petitioner failed to prove that the gross sales to senior citizens were actually declared in its 2002 Annual Income Tax Return.

For taxable year 2002, petitioner reported in its Annual Income Tax Return as sales the amount of P230,456,682.00, [14] which were likewise reflected in its Audited Financial Statements for the same tax year. [15] However, petitioner neglected to present a detailed breakdown of its daily net sales, as reflected in its detailed General Ledger, Sales Book and Cash Receipts Book to show which part of the reported sales comprised of the Gross Sales to senior citizens. The detailed breakdown would have enabled the Court to verify or trace whether the daily gross sales to senior citizens as recorded in the *Special Record Books* actually formed part of the gross sales reported in the Annual Income Tax Return.

[14] Item 14, Sales/Revenues/Receipts/Fees (Sch.1)
[15] Exhibit "D"

It must be emphasized that petitioner is claiming a tax credit certificate representing the 20% sales discounts it granted to its qualified senior citizen clients. A claim for refund or issuance of tax credit certificate, being in the nature of a claim for exemption, is construed *strictissimi juris* against the taxpayer.[16] Accordingly, it is necessary for petitioner to show that its sales to senior citizens (inclusive of the 20% sales discounts) were indeed reported as part of its taxable income. Inasmuch as petitioner failed to discharge its burden of proof, its claim must necessarily fail.

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[16] Anno Domini Drug, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6929, July 20, 2006

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice