REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ANNO DOMINI DRUG, INC., Petitioner,	**EB No. 253** (CTA Case No. 6929)
-versus-	Present: ACOSTA, *P.J.* CASTAÑEDA JR., BAUTISTA UY, CASANOVA, and PALANCA-ENRIQUEZ, *JJ*:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 1 1 2007

x - x

DECISION

CASANOVA, J:

This is a Petition for Review,[1] filed by the petitioner-Anno Domini Drug, Inc., with the Court *En Banc*, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated July 20, 2006 in CTA Case No. 6929 entitled, "*Anno Domini Drug, Inc., petitioner vs. Commissioner of Internal Revenue, respondent,*" denying the Petition for Review[3] in the above-mentioned case for insufficiency of evidence, and from the

[1] CTA En Banc Rollo, pp. 7-28.
[2] Annex "A", CTA En Banc Rollo, pp.29-43.
[3] CTA Second Division Rollo, pp. 1-22.

Resolution[4] (*Assailed Resolution*) dated January 3, 2007 denying petitioner's Motion for Reconsideration[5] for lack of merit.

The facts of the case, as culled from the records, are as follows:

> *"Petitioner, Anno Domini Drug, Inc., is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with business address at J.P. Rizal Street, Laoag City. As a franchisee under the business name and style of "Mercury Drug", it is duly licensed to operate drug stores by the Department of Trade and Industry, Bureau of Food and Drugs, and the local government unit of Laoag City.*
>
> *On the other hand, respondent Commissioner of Internal Revenue is the duly appointed Commissioner of Internal Revenue with office address at BIR National Building, Diliman, Quezon City.*
>
> *On April 15, 2002 and April 15, 2003, petitioner filed its Annual Income Tax Returns under protest for the taxable years 2001 and 2002, respectively, reflecting the following:*[6]

	2001	2002
Sales	P54,576,453.47	P58,050,085.13
Less: Cost of Sales	51,439,142.41	54,799,280.36
Gross Income from Operation	P 3,137,311.06	P 3,250,804.77
Add: Non-Operating & Other Income	504.59	49,450.13
Total Gross Income	P 3,137,815.65	P 3,300,254.90
Less: Deductions	2,961,895.29	3,041,969.54
Taxable Income	P 175,920.36	P 258,285.36
Tax Rate	32%	32%
Income Tax	P 56,294.52	P 82,651.32
MCIT	P 62,746.22	P 65,016.10
Tax Due	P 62,746.22	P 82,651.32
Less: Tax Credits/Payments		
Prior Year's Excess Credits		
Tax Payments for the First Three Quarters	P 39,045.80	P 60,615.03
Creditable Tax Withheld for the First Three Quarters		
Creditable Tax Withheld for the Fourth Quarter	2,811.22	5,289.06
Total Tax Credits/Payments	P 41,857.02	P 65,904.09
Tax Payable/(Overpayment)	P 20,889.20	P 16,747.23

> *On February 19, 2004, petitioner filed its claim for a tax credit or*

---

[4] Annex "B", CTA En Banc Rollo, pp. 44-49.
[5] CTA Second Division Rollo, pp. 25http://www.youtube.com/watch?v=mO6J_UgmGxA6-257.
[6] Exhibits "B", Annual Income Tax Return (BIR Form 1702), Rollo, pp. 140-142 and Exhibit " O", 2002 Annual Income Tax Return (BIR Form 1702), CTA Second Division Rollo, pp. 157-159.

refund in the total amount of P786,118.88 allegedly representing the twenty percent (20%) discount it granted to qualified senior citizens from their purchases of medicines covering the period from January 1, 2001 to December 31, 2002, as well as, petitioner's alleged overpaid income taxes less income taxes payable, both for the taxable years 2001 and 2002, computed as follows:[7]

Taxable Year 2001			
Sales, Net			P54,576,453.47
Add:	Cost of 20% Discounts to Senior Citizens		585,408.69
Sales, Gross			P55,161,862.16
Less:	Cost of Sales		
	Merchandise Inventory, Beginning	P 6,005,861.61	
	Purchases	52,112,494.51	
	Merchandise Inventory, Ending	(6,679,213.71)	51,439,142.41
Gross Profit			P 3,722,719.75
Add:	Other Income (Net of Interest Income Subject to Final Tax)		504.59
Total Income			P 3,723,224.34
Less:	Operating Expenses		2,961,895.29
Net Income Before Income Tax			P 761,329.05
Income Tax			P 243,625.30
Less:	Income Tax Actually Paid		(62,746.22)
	Cost of 20% Discounts to Senior Citizens		(585,408.69)
Income Tax (Refundable/Creditable)			P (404,529.61)
Taxable Year 2002			
Sales, Net			P58,050,085.13
Add:	Cost of 20% Discounts to Senior Citizens		561,160.69
Sales, Gross			P58,611,245.82
Less:	Cost of Sales		
	Merchandise Inventory, Beginning	P 6,679,213.71	
	Purchases	54,971,367.21	
	Merchandise Inventory, Ending	(6,851,300.56)	54,799,280.36
Gross Profit			P 3,811,965.46
Add:	Other Income		49,450.13
Total Income			P 3,861,415.59
Less:	Operating Expenses		3,041,969.54
Net Income Before Income Tax			**P 819,446.05**
Income Tax			P 262,222.74
Less:	Income Tax Actually Paid		(82,651.32)
	Cost of 20% Discounts to Senior Citizens		(561,160.69)

[7] Exhibit "Y", Petitioner's Written Claim for Tax Credit Refund addressed to Commissioner of Internal Revenue dated February 19, 2004, CTA Second Division Rollo, pp. 175-177.

93

Income Tax (Refundable/Creditable)	P (381,589.27)
Total Income Tax (Refundable/Creditable)	P (786,118.89)

Before it could be barred by prescription, petitioner deemed it proper to elevate its case to this Court through this instant Petition for Review on April 13, 2004.

On May 19, 2004, respondent filed his Answer, raising the following as his Special and Affirmative Defenses, to quote:

> *'4. Revenue Regulations No. 2-94 did not alter, modify or amend the intent of the law to consider the 20% discount granted to qualified senior citizen as deduction from petitioner's gross income and not as credit against its tax liability as petitioner insists;*
>
> *5. With the accumulation of experience and growth of specialized capabilities by the agency charged with implementing a particular statute, it is now a recognized principle that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the constitution and other laws (Nestle Philippines, Inc., vs. CA, et.al., 203 SCRA 504);*
>
> *6. R.A. 7432 allows the discounts granted to senior citizens to be claimed as a tax credit but is silent as to the mechanics of availing the same. For clarification and as a curative measure, Revenue Regulations No. 2-94 was issued defining the term "tax credit" as used in the law and providing therein the manner of claiming the same, which is be deduction from the establishment's gross income and not from its income tax liability. Otherwise an absurdity, not intended by the law, will arise;*
>
> *7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;*
>
> *8. The amount of P786,118.88 being claimed by petitioner as alleged sales discount to senior citizens on their purchases of medicines for taxable years 2001 and 2002 were not properly documented;*

94

9. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

10. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming refund/credit; and

11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.'[8]

After presentation of petitioner's testimonial evidence and the admission of its documentary exhibits, respondent's counsel, Atty. Maricel G. Quilates, manifested that she is not presenting testimonial evidence because the issues raised in the instant petition are purely legal. The parties were thereafter directed to file their respective Memorandum. On March 1, 2006, this case was submitted for decision after the submission of the parties' respective memorandum.

The issues as stipulated by the parties are as follows:

1. Whether or not the claim of petitioner for tax credit/refund was administratively and judicially filed within the two-year statutory period;

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

3. Whether or not petitioner granted discounts in 2001 and 2002 to qualified senior citizens on their purchases of medicines pursuant to Republic Act No. 7432 in the total amount of One Million One Hundred Forty Six Thousand Five Hundred Sixty Nine and 38/100 Pesos (P1,146,569.38); and

4. Whether or not the petitioner is entitled to a tax credit/refund in the amount of Seven Hundred Eighty Six Thousand One Hundred Eighteen and 88/100 Pesos (P786,118.88) representing the cost of the twenty (20%)

---

[8] Answer, CTA Second Division Rollo, pp. 34-35.

95

> *percent discount granted to qualified senior citizens on their purchases of medicines during the period from January 1, 2001 to December 31, 2002 and overpaid income taxes less income taxes payable for 2001 and 2002 taxable years."*[9]

After trial on the merits, the *CTA Second Division* promulgated the assailed Decision, the dispositive portion of which reads:

> *"WHEREFORE, in view of the foregoing, the subject Petition for Review is hereby DENIED for insufficiency of evidence.*
>
> *SO ORDERED."*

Not satisfied with the above pronouncement, petitioner filed a "Motion for Reconsideration on August 31, 2006. Respondent, on the other hand, filed an Opposition (Re: Motion for Reconsideration) on September 27, 2006. On January 3, 2007, the *CTA Second Division* promulgated the assailed Resolution, the dispositive portion of which reads:

> *"WHEREFORE, there being no other new matters or arguments advanced in petitioner's Motion for Reconsideration which may compel this Court to reverse, modify or amend the assailed Decision, the same is hereby DENIED for lack of merit.*
>
> *SO ORDERED."*

Records show that the assailed Resolution was received by the petitioner on January 9, 2006[10], thus, it has fifteen (15) days from said date within which to file a Petition for Review with the Court *En Banc* pursuant to Section 3(b) Rule 8 of the Revised Rules of the Court of Tax Appeals[11]. On January 24, 2007, petitioner filed a "Motion for Extension of Time to File Petition for Review with

---

[9] Joint Stipulation of Facts and Issues, CTA Second Division Rollo, pp. 55-57.
[10] CTA Second Division Rollo, p. 264. Should be January 9, 2007.
[11] Sec. 3. Who may appeal; period to file petition-
(a) xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Xxx xxx.

the CTA En Banc"[12]. On January 25, 2007, the Court *En Banc* issued a Minute Resolution[13] granting the said motion thus, giving petitioner a final and non-extendible period of fifteen (15) days from January 24, 2007 or until February 9, 2007 within which to file a Petition for Review with the Court *En Banc*. In compliance with the Court's Resolution, petitioner filed a Petition for Review[14] on February 8, 2007.

In support of the instant petition for review, petitioner raised the same issues as jointly stipulated by both parties in CTA Second Division Case No. 6929. In addition, petitioner points out whether or not it is required by Republic Act No. 7432 or the Senior Citizens Law to file its tax returns and to prove that its net sales to qualified senior citizens were included in its financial statements and tax returns before it can claim for reimbursement in the form of tax credit for the discounts it granted.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds the issues raised in the instant petition as mere reiteration of the issues exhaustively discussed by the *CTA Second Division* in its assailed Decision and Resolution.

As correctly held by the *CTA Second Division*, and *We* agree:

> *The first issue on the timeliness of petitioner's administrative and judicial claims for refund/tax credit is ruled in the affirmative.*
>
> *Petitioner filed its Annual Income Tax Returns on April 15, 2002 and April 15, 2003 for the taxable years 2001 and 2002, respectively, and it had until April 14, 2004 and April 14, 2005 within which to file both its administrative and judicial claim for tax credit/refund, respectively.*[15] *Considering that petitioner's administrative claim was filed on February 19, 2004 and the judicial claim was filed on April 13, 2004, evidently, the requirements provided under the laws have been complied with.*
>
> *The second issue refers to the manner by which the 20% sales*

[12] CTA En Banc Rollo, pp. 3-5.
[13] CTA En Banc Rollo, p. 6.
[14] Ibid.
[15] The taxable year 2004 being a leap year

discount granted to qualified senior citizens on their purchases of medicines: whether it should be treated as tax credit/refund deductible from the tax due as provided under Republic Act No. 7432 or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94. This issue was resolved by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*** *in this wise:*

> *"Section 4 (a) of RA 7432*[16] *grants to senior citizens the privilege of obtaining a 20 percent discount on their purchase of medicine from any private establishment in the country. The latter may then claim the cost of the discount as a tax credit. x x x*
>
> *"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.*
>
> *xxx xxx xxx*
>
> *Tax Credit versus*
> *Tax Deduction*
>
> *Although the term is not specifically defined in our Tax Code,* ***tax credit*** *generally refers to an amount that is "subtracted directly from one's total tax liability." It is an "allowance against the tax itself" or "a deduction from what is owed" by a taxpayer to the government. Examples of* ***tax credits*** *are withheld taxes, payments of estimated tax, and investment tax credits.*
>
> ***Tax credit*** *should be understood in relation to other tax concepts. One of these is* ***tax deduction*** *— defined as a subtraction "from income for tax purposes," or an amount that is "allowed by law to reduce income prior to [the] application of the tax rate to compute the amount of tax which is due." An example of a* ***tax deduction*** *is any of the allowable deductions enumerated in Section 34 of the Tax Code.*

---

[16] Entitled "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for other purposes," this law took effect in 1992. See *Santos, Jr. v. Llamas*, 379 Phil. 569, 577, January 20, 2000.

98

*A **tax credit** differs from a **tax deduction**. On the one hand, a **tax credit** reduces the tax due, including — whenever applicable — the **income tax** that is determined after applying the corresponding tax rates to **taxable income**. A **tax deduction**, on the other, reduces the income that is subject to tax in order to arrive at **taxable income**. To think of the former as the latter is to avoid, if not entirely confuse, the issue. A **tax credit** is used only after the tax has been computed; a **tax deduction**, before.*

xxx xxx xxx

*Laws Not Amended
by Regulations*

Second, the law cannot be amended by a mere regulation. In fact, a regulation that "operates to create a rule out of harmony with the statute is a mere nullity"; it cannot prevail.

*It is a cardinal rule that courts "will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it x x x." In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that "Congress may not have the opportunity or competence to provide." The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. **Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.***

*In the present case, the **tax authorities have given the term tax credit in Sections 2.i and 4 of RR 2-94 a meaning utterly in contrast to what RA 7432 provides. Their interpretation has muddled up the intent of Congress in granting a mere discount privilege, not a sales discount. The administrative agency issuing these regulations may not enlarge, alter or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature.***

In case of conflict, the law must prevail. A "regulation adopted pursuant to law is law." Conversely, a regulation or any portion thereof not adopted pursuant to law is no law and has neither the force nor the effect of law.

xxx xxx xxx

*Grant of Tax Credit
Intended by the Legislature*

99

> *Fifth, RA 7432 itself seeks to adopt measures whereby senior citizens are assisted by the community as a whole and to establish a program beneficial to them. These objectives are consonant with the constitutional policy of making "health x x x services available to all the people at affordable cost" and of giving "priority for the needs of the x x x elderly." Sections 2.i and 4 of RR 2-94, however, contradict these constitutional policies and statutory objectives.*
>
> *Furthermore, Congress has allowed all private establishments a simple* ***tax credit****, not a deduction. In fact, no cash outlay is required from the government for the* ***availment*** *or* ***use*** *of such credit. The deliberations on February 5, 1992 of the Bicameral Conference Committee Meeting on Social Justice, which finalized RA 7432, disclose the true intent of our legislators to treat the* ***sales discounts*** *as a* ***tax credit,*** *rather than as a deduction from* ***gross income*** [17]*"*

Clearly from the foregoing jurisprudence interpreting pertinent provisions of Republic Act No. 7432, the 20% sales discounts granted to qualified senior citizens should be treated as tax credits instead of as mere deductions from gross income.

The third issue is a factual issue, that is, whether or not petitioner granted discounts in 2001 and 2002 to qualified senior citizens on their purchases of medicines pursuant to Republic Act No. 7432 in the total amount of One Million One Hundred Forty Six Thousand Five Hundred Sixty Nine and 38/100 Pesos (Php1,146,569.38). A resolution in the affirmative will likewise favorably resolve the fourth issue as to whether or not the petitioner is entitled to a tax credit/refund in the amount of Seven Hundred Eighty Six Thousand One Hundred Eighteen and 88/100 Pesos (Php786,118.88) representing the cost of the twenty (20%) percent discount granted to qualified senior citizens on their purchases of medicines during the period from January 1, 2001 to December 31, 2002 and overpaid income taxes less income taxes payable for 2001 and 2002 taxable years. Thus, the third and fourth issues will be resolved jointly.

In proving that petitioner actually granted the twenty (20%) percent sales discounts to its qualified senior citizen clientele, the following supporting documents were presented by petitioner:

> *a. Various cash slips issued by its entity covering the taxable years 2001 and 2002 (Exhibits "Z-64201 to Z-*

[17] G.R. No. 159647, April 15, 2005

65100, Z-66301 to Z-67200, Z-68901 to Z-69900, Z-71401 to Z-72700, Z-74501 to Z-75500, Z-77201 to Z-78000, Z-78501 to Z-78800, Z-79201 to Z-80000, Z-82401 to Z-83000, Z-64703, DD-83001 to DD-83400, DD-84201 to DD-84300, DD-84401 to DD-85300, DD-85901 to DD-86300, DD-86501 to DD-87600, DD-90201 to DD-90500, DD-91101 to DD-91300, DD-91601 to DD-91800, DD-92001 to DD-92100, DD-92301 to DD-92400, DD-92701 to DD-92800, DD-92901 to DD-93100, DD-93301 to DD-93400, DD-93601 to DD-94600, DD-95401 to DD-95600, DD-96201 to DD-97400, DD-99001 to DD-99200, DD-99401 to DD-99800, and DD-84326");

b. 2001 and 2002 Summary of Sales and Discounts for Senior Citizens (Exhibits "II, II-1, JJ, and JJ-1");

c. Special Record Book for the taxable years 2001 and 2002 as required under the implementing rules of Republic Act No. 7432 (Exhibits "AA, AA-3, AA-4, EE, EE-3, and EE-4");

d. Cash Receipts Book for January 2001 and January 2002 (Exhibits "BB, BB-1 to BB-3, FF, FF-1 to FF-3");

e. 2001 and 2002 General Ledger (Exhibits "CC, CC-1 to CC-3, GG to GG-3");

f. 2001 and 2002 Annual Income Tax Returns (Exhibits " B and O"); and

g. 2001 and 2002 Audited Financial Statements (Exhibits "N and X").

After a thorough examination of the various cash slips, in relation to petitioner's submitted Summary of Sales and Discounts for Senior Citizens and the Special Record Books for 2001 and 2002, the Court finds the Report of the Court-commissioned Independent Certified Public Accountant to be in order. It is stated therein, among others, that the sales discounts given to senior citizens for the taxable years 2001 and 2002, wherein the required details for the issuance of the cash slips are complete, amounted to Php1,096,878.28.

However, despite the existence of the cash slips supporting the 20% sales discounts of Php1,096,878.28, petitioner's claim for refund/tax credit will nevertheless be denied because it failed to prove that the sales made to senior citizens (net of the 20% sales discounts) were actually *declared in petitioner's 2001 and 2002 Annual Income Tax Returns in relation to its Audited Financial Statements for the same taxable years.*

It must be emphasized that petitioner is claiming tax credits/refunds for the twenty percent (20%) sales discounts it granted to its qualified senior citizens clientele, thus, it is necessary that it be shown that the related eighty percent (80%) sales to senior citizens were indeed reported as part of its taxable income for 2001 and 2002, on the assumption that the 20% sales discounts were indeed originally treated as deductions from its gross income.

To illustrate, petitioner reported its sales of Php54,576,453.47 for the taxable year 2001 and Php58,050,085.13 for the taxable year 2002 marked as Exhibits "B-3" and "O-3",[18] *respectively, under item 14 pertaining to "Sales/Revenues/Fees (Sch.1)" of its Annual Income Tax Return for the year 2001 and 2002 (BIR Form No. 1702). These amounts were likewise reflected on petitioner's Audited Financial Statements for the same years.*[19]

In this regard, and to further prove that these amounts correctly included petitioner's sales to its senior citizens (which is net of the mandated 20% sales discounts), petitioner presented in evidence its Cash Receipts Books for the taxable year 2001 and 2002 showing, on certain pages, the transactions for January 2001 and 2002; its Special Records Book as well as its General Ledgers for the same years.[20]

Unfortunately, petitioner failed to present a detailed breakdown of its daily net sales as reflected in the Cash Receipts Books, to enable this Court to verify or trace whether the daily net sales to senior citizens as recorded in the Special Records Books indeed formed part of the daily net sales amounts in the Cash Receipts Books. To illustrate, petitioner's net sales to its senior citizens clientele for January 26, 2001 was recorded in its 2001 Special Records Book as amounting to Php4,207.04 (where Cash Slip No. 64703 with corresponding net sales amount of Php697.20 formed part of). For the same date, petitioner's Cash Receipts Book reflected a net sales of Php141,518.32. Without petitioner providing for the details as to the breakdown of the net sales amount, this Court finds it impossible to establish whether the net sales of Php4,207.04 (as reflected on the Special Receipts Book) was indeed included therein.

---

[18] CTA Second Division Rollo, pp. 140 and 157, respectively.

[19] Exhibits "N-3", Income Statement , For the Year Ended December 31, 2001 , Rollo, p. 156, and Exhibit "X-3", Income Statement For the Year Ended December 31,2002, CTA Second Division Rollo, p. 174.

[20] Exhibits "CC to CC-2", 2001 General Ledger, CTA Second Division Rollo, pp. 183-184, and Exhibits "GG to GG-2", 2002 General Ledger, CTA Second Division Rollo, pp. 190-191.

> *Considering that petitioner is claiming tax credits for the 20% sales discounts it granted to senior citizens, it is necessary that petitioner proves that the related 80% sales to senior citizens were indeed reported as part of its net taxable income for 2001 and 2002, i.e., on the assumption that the said 20% discounts were originally treated as deductions from gross income.*
>
> *For failure of petitioner to sufficiently prove that its net sales to senior citizens were in fact declared in its 2001 and 2002 income tax returns, the instant petition will not prosper. Settled in the rule that a claim for refund is in the nature of a claim for exemption, hence, should be construed in strictissimi juris against the taxpayer.*[21]

To reiterate, considering that petitioner is claiming tax credits for the 20% sales discounts it granted to senior citizens, it is necessary that petitioner proves that the related 80% sales to senior citizens were indeed reported as part of the net taxable income for 2001 and 2002, on the assumption that the said 20% discounts were originally treated as deductions from gross income.

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed July 20, 2006 Decision and January 3, 2007 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon by the *CTA Second Division*.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the July 20, 2006 Decision and January 3, 2007 Resolution of the *CTA Second Division* are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[21] Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332.

103

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

101