REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

EN BANC

ROXAS FOOD VENTURES, INC.,

Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

C.T.A. E.B. NO. 263
(C.T.A. CASE NO. 6947)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

MAY 2 1 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

It has always been the rule that those seeking tax refunds or credits bear the burden of proving the factual bases of their claims. It is, therefore, incumbent on them to submit sufficient evidence to justify the grant of refund or tax credit.

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THE CASE

This is a Petition For Review filed by Roxas Food Ventures, Inc. (hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals),* in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision dated August 22, 2006 and Resolution dated January 11, 2007 issued by the First Division of this Court in C.T.A. Case No. 6947, the respective dispositive portions of which read as follows:

> "IN VIEW OF THE FOREGOING, petitioner's claim is hereby DENIED for insufficiency of evidence.
>
> SO ORDERED."
>
> "WHEREFORE, finding no cogent reason to reverse or modify the assailed Decision, petitioner's Motion for Reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED."

THE FACTS

The facts of the case are undisputed.

Petitioner is a duly organized domestic corporation engaged in the restaurant business under the business name and style "The Aristocrat Restaurant", with business address at 432 San Andres St., Malate, Manila, while respondent is the duly appointed Commissioner of Internal Revenue empowered, among others, to grant claims for refund/tax credit of overpaid income taxes, with office address at BIR National Office Building, Diliman, Quezon City.

During the fiscal year ending June 30, 2002, petitioner allegedly granted, in compliance with Republic Act (R.A.) No. 7432, 20% sales discounts in the amount of P1,050,674.00 to qualified senior citizens on their purchases of food and beverages and/or availment of petitioner's services.

In its income tax return for fiscal year ending June 30, 2002 filed on October 15, 2002, petitioner allegedly was forced to claim as deduction from its gross income the amount of P1,050,674.00, representing 20% sales discounts to senior citizens in accordance with *Section 2(i) of Revenue Regulations No. 2-94,* which implements *Section 4 of R.A. No. 7432.*

On December 11, 2003, petitioner filed with the Bureau of Internal Revenue (BIR) a letter requesting for a refund in the amount of P714,458.00 allegedly representing overpaid income tax/tax credit for the fiscal year ended June 30, 2002 arising from the erroneous treatment of the twenty (20%) percent sales discounts to senior citizens as deductions from gross income, as prescribed by *Section 2(i) of Revenue Regulations No. 2-94,* instead of as tax credits as provided for under *Section 4 of R.A. No. 7432,* the computation of which is shown as follows:

Gross Sales	P243,864,760.00
Less: Senior Citizen 20% discount	-
Net Sales	P243,864,760.00
Less: Cost of Sales	154,953,404.00
Gross Profit	P 88,911,356.00
Less: Operating expense	81,506,649.00
Operating Income	7,404,707.00
Add: Other Income	817,153.00
Net income before Income Tax	8,221,153.00
Income Tax Due (32%)	P 2,687,894.00
Less: Tax Credit	
Senior Citizens 20% discount	1,050,674.00
Income Tax Payable	P 1,637,220.00
Income Tax Actually Paid	2,351,678.00
Tax Refundable	**P (714,458.00)**

Due to respondent's inaction on its claim, petitioner elevated its case before this Court via a Petition for Review filed on April 15, 2004, docketed as C.T.A. No. 6947.

In his answer, respondent alleged by way of special and affirmative defenses that *Revenue Regulations No. 2-94* did not alter, modify or

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amend the intent of the law to consider the 20% discount granted to qualified senior citizens as deduction from petitioner's gross income and not as credit against its tax liability as petitioner insists; the amount of P714,458.00 being claimed by petitioner as alleged sales discount to senior citizens on their purchases of food and beverages and/or availment of its services for taxable years 1999 and 2000 (shall be for the fiscal year ending June 30, 2002) was not properly documented, as well as its gross income; petitioner must show that it has complied with the provisions of *Sections 204(c) and 229 of the Tax Code* for claiming tax refund/credit.

After trial on the merits, the First Division rendered the assailed decision on August 22, 2006 denying petitioner's claim for insufficiency of evidence.

Not satisfied, petitioner moved for a reconsideration of the same, which the First Division denied in its Resolution dated January 11, 2007.

Hence, this Petition For Review.

THE ISSUE

The lone issue for resolution is:

WHETHER OR NOT THE FIRST DIVISION ERRED WHEN IT RULED THAT THE PETITIONER WAS NOT

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ABLE TO SUBSTANTIATE ITS CLAIM FOR TAX CREDIT IN THE AMOUNT OF P714,458.00 ARISING FROM ITS TREATMENT OF THE 20% SALES DISCOUNT GRANTED BY PETITIONER TO QUALIFIED SENIOR CITIZENS FOR THE FISCAL YEAR ENDING JUNE 30, 2002.

On March 14, 2007, without necessarily giving due course to the petition, We required the respondent to file his comment thereto.

On April 10, 2007, respondent filed his "Comment'Opposition To The Petition For Review".

Hence, the Petition is now deemed submitted for decision.

THE COURT *EN BANC's* RULING

We deny the Petition.

After a careful study of the petition, We find that the same is a mere rehash of petitioner's "Motion For Reconsideration" filed on September 26, 2006 in C.T.A. No. 6947, which had already been thoroughly discussed and resolved in the assailed Decision dated August 22, 2006, as follows:

> "Thus, We will now proceed to the issue of whether or not petitioner was able to substantiate its claim.
>
> The various BIR registered guest checks/official receipts submitted in evidence by petitioner proved that the

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amount of P1,050,674.00 actually represents 20% sales discounts granted by petitioner to senior citizens for the fiscal year ending June 30, 2002.

However, despite the existence of various guest checks supporting the 20% sales discounts of P1,050,674.00 for the subject period, petitioner's claim must still be denied because this Court cannot ascertain from the records whether petitioner's sales to senior citizens (net of the 20% sales discounts) were really declared as part of the sales amount of P242,814,086.00 reflected in its annual income tax return and audited financial statements for the fiscal year ending June 30, 2002. Petitioner merely presented its Working Trial Balance, which shows the following sales and sales discount balances:

SALES		(242,814,085.65)
Food and refreshment		
Sales – food	(226,523,089.71)	
Sales - beverage	(12,059,559.71)	
Wine and liquor	-	
Sales – beer & liquor	(3,970,461.26)	
Sales Discount	1,013,370.26)	
Zero VAT	(1,274,345.27)	

Considering that the above account balances are only summaries of the entries shown in petitioner's books of accounts, this Court cannot determine whether the monthly sales to senior citizens as indicated in the Monthly Summaries of office for Senior Citizen Affairs (OSCA) Discounts actually formed part of the total sales amount of P242,814,085.65, without the presentation of petitioner's books of accounts, such as the detailed general ledger, cash receipts book, sales book or special record book for sales to senior citizens."

We have reviewed the foregoing findings of the First Division *vis-à-vis* the evidence on record and have found nothing amiss in the manner by which such evidence were appraised. Indeed, tax refunds are construed in *strictissimi juris* against the taxpayer (*Province of Tarlac vs. Alcantara, 216 SCRA 790*).

It is basic that the one who is claiming for a tax refund/credit must first prove and establish its right to such claim by presenting evidence to attest to its entitlement to the same. In this case, petitioner has the burden of proving that the net sales to senior citizens were in fact declared in its Income Tax Return for the fiscal year ending June 30, 2002. However, after a careful examination of petitioner's documentary evidence, We find that petitioner failed to actually declare in its Income Tax Return for fiscal year ending June 30, 2002 its net sales to senior citizens.

As aptly ruled by the First Division in its assailed Resolution dated January 11, 2007:

> "Indeed, there is no contest with respect to the amount of income stated in the income tax return nor is there a question on the truthfulness of the amount of subject tax paid. However, the denial of petitioner's claim was not premised on that since the denial was for failure of petitioner to present its books of accounts, its detailed general ledger,

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> cash receipts books, sales book or special record book for sales to senior citizens, which would have confirmed that the net sales to senior citizens were in fact included and declared in its income tax return for the fiscal year ending June 30, 2002. What petitioner presented was its Working Trial Balance which is a mere record of the sum total of all its sales. Thus, this Court could not determine whether those sales amounts were made from purchases by senior citizens or part of petitioner's ordinary sales.
>
> In other words, there was no way to ascertain from the records whether petitioner's sales to senior citizens (net of the 20% sales discounts) were really declared as part of the sales amounts reflected in its annual income tax return. The burden of proof to establish the factual basis of its claim for tax refund lies with the petitioner. Hence, without petitioner providing for the details of the breakdown of the net sales amount it granted to its senior citizen clientele, this Court cannot blindly rule for the petitioner and order a grant of refund or issuance of tax credit certificate in its favor."

We agree with the First Division that the best evidence are petitioner's book of accounts, such as the detailed general ledger, cash receipts books, sales book or the special book for sales to senior citizens, to determine whether or not the monthly sales to senior citizens as indicated in the Monthly Summaries of Office for Senior Citizens Affairs (OSCA) Discounts actually formed part of the total sales of P242,814,085.65. But, not one of these documents was presented by petitioner.

Petitioner contends that it presented its witness, Orlando Romano Sagun, who explained that "the sales of petitioner in the amount of P242,814,086.00 for the year ended June 30, 2002 as reflected in its financial statements and income tax return to said year is net of the 20% sales discounts given to senior citizens." However, the documentary evidence presented by the petitioner does not show the same. Documentary evidence is like physical evidence; it is the evidence of the highest order. It speaks more eloquently than a hundred witnesses (*People v. Sunpongco, 163 SCRA 222, 223*), but no such documentary evidence was presented by petitioner in this case.

In view of the foregoing, We find no cogent reason to reverse the First Division.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice