REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

BICOLANDIA DRUG CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7452

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

OCT 03 2008 10:20 am

x - x

DECISION

BAUTISTA, *J.*:

This *Petition for Review* seeks the issuance of a tax credit certificate in the amount of P11,788,585.08, allegedly representing unused tax credits earned for taxable year 2003, arising from the twenty percent (20%) sales discounts granted by petitioner to senior citizens on their purchases of medicines as provided in Republic Act No. 7432.

Bicolandia Drug Corporation (petitioner) is a domestic corporation organized and existing under the laws of the Philippines, with principal address at No. 28 Shaw Boulevard, Pasig City.[1] Petitioner is duly licensed to operate drug stores by the Bureau of Food and Drugs (BFAD), the Department of Trade and Industry (DTI), the Bureau of Internal Revenue (BIR), and the local government units where the drugstores are located.[2]

---

[1] Par. 1, Joint Stipulation of Facts (JSF), Docket, p. 48
[2] Par. 3, JSF, Docket, p. 48

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with office address at BIR National Office Building, Diliman, Quezon City.

Petitioner operates fifteen (15) drugstores located in the following places:

1. Naga Elias Angeles;
2. Daet Panotes;
3. Naga Abella;
4. Iriga;
5. Masbate Tara;
6. Pili Omega Gold Plaza;
7. Daet Lukban;
8. Tabaco Albay;
9. Sorsogon Magsaysay;
10. Polangui Albay;
11. Naga Panganiban;
12. Bulan Sorsogon;
13. Nabua Hi-way I Camarines Sur;
14. Legaspi Rizal; and
15. Labo Lukban.[3]

In its Annual Income Tax Return for 2003 filed on April 29, 2004, petitioner reported and treated the 20% sales discount of P11,788,585 as pre-paid tax credit[4] by declaring as creditable tax withheld for the first three quarters the amount of P8,414,189.00[5] and creditable tax withheld for the fourth quarter the amount of P3,374,396.00[6].

On April 12, 2006, petitioner filed with respondent a request for the issuance of tax credit certificate in the amount of P11,788,585.08, equivalent to the twenty percent (20%) sales discounts allegedly granted by petitioner to qualified senior citizens during taxable year 2003, in compliance with Republic Act No. 7432.[7]

On April 17, 2006, petitioner elevated its claim before this Court by filing this *Petition for Review*. As of the date of the filing of the instant Petition, respondent has not granted petitioner's request for a tax credit certificate.

[3] Par. 2, JSF, Docket, p. 48
[4] Par. 4, JSF, Docket, p. 48
[5] Exhibit "C", line 26C
[6] Exhibit "C", line 26D
[7] Par. 5, JSF, Docket, pp. 48-49

On June 2, 2006, respondent filed his *Answer*[8] and averred the following Special and Affirmative Defenses:

> "5. The claim for refund is still under examination by the Respondent Bureau of Internal Revenue;
>
> 6. The burden of proof is upon the Petitioner to prove that it is entitled to the claim for refund;
>
> 7. The grant of a claim for refund is tantamount to an exemption from taxation which should be strictly construed against the taxpayer and in favor of the government;
>
> 8. The correct interpretation and enforcement of the provisions on the tax credits of Republic Act No. 7432, entitled 'An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes' is contained in Revenue Regulations No. 2-94, specifically Section 2, Paragraph (1) so states:
>
>> '(1) Tax Credits – refers to the amount representing the twenty percent (20%) discount granted to a qualified senior citizen by all establishments relative to their utilization of transportation services, hotels and seminar lodging, cinema houses, concert halls, circuses, carnivals and other similar places of cultures, leisure and amusement, which discount shall be deducted by the said establishment for their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes.'
>
> 9. The provision under Republic Act No. 7432, which states that the twenty percent (20%) sales discounts on purchases or medicines by senior citizens be treated as a tax credit is a misnomer as it runs counter to the solemn duty of the government to collect all taxes.
>
> 10. The power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate must be strictly construed and the same must be couched in clear and unmistakable terms in order that it may be applied. (***Floro Cement Corporation vs. Gorospe, G.R. No. 46787, August 2, 1991***);
>
> 11. In Statutory Construction, in cases of ambiguities, the principle that the contemporaneous construction of statute given by executive officers of the government whose duty is to execute is entitled to a great respect and should ordinarily control the construction, it is firmly embedded in our jurisprudence that no authorities need be cited to support it (Phil. Assoc. of Free Labors Unions vs. BIR). Executive officials are presumed to have familiarized themselves with all consideration pertinent to the meaning and

[8] Docket, pp. 34-35

> purpose of the law and to have formed an independent consideration pertinent to the meaning and purpose of the law and to have formed an independent, conscientious and competent expert opinion thereon (***Richard vs. Drewry-Hughes Co. 94 S.E. 989***)."

Petitioner filed its *Pre-Trial Brief*[9] on June 23, 2006; while respondent filed its *Pre-Trial Brief*[10] on June 30, 2006. Pre-Trial was held on June 30, 2006.[11] The parties filed their *Joint Stipulation of Facts*[12] on July 7, 2006, which was approved in a *Resolution*[13] dated July 11, 2006.

On January 29, 2007, Mr. Alfonso P. Katigbak was appointed as the Court-commissioned Independent Certified Public Accountant (CPA).[14] The Independent CPA filed his *Report*[15] on January 31, 2007 and an *Addendum* on March 9, 2007.[16]

Petitioner filed its *Formal Offer of Documentary Evidence*[17] on March 21, 2007, which was resolved in a *Resolution*[18] dated May 29, 2007. Respondent, meanwhile, waived his right to present evidence.[19] Thus, the parties were ordered to file their respective *Memorandum*.[20]

Petitioner, however, filed an *Urgent Motion to Defer Submission of Memorandum and to Allow Petitioner to Present Additional Evidence* on August 16, 2007, which was granted in open court on August 31, 2007[21] and in a *Resolution*[22] dated September 5, 2007.

Petitioner filed its *Additional Formal Offer of Documentary Evidence*[23] on October 26, 2007 and was resolved in a *Resolution*[24] dated December 18, 2007.

---

[9] Docket, pp. 38-42
[10] Docket, pp. 45-46
[11] Docket, p. 47
[12] Docket, pp. 48-49
[13] Docket, p. 51
[14] Docket, pp. 75
[15] Docket, pp. 77-170
[16] Docket, pp. 177-180
[17] Docket, pp. 182-187
[18] Docket, pp. 189-190
[19] Resolution dated July 23, 2007
[20] Docket, pp. 193
[21] Docket, pp. 197
[22] Docket, pp. 199
[23] Docket, pp. 211-214
[24] Docket, pp. 223

In a *Resolution*[25] dated March 5, 2008, the case was submitted for decision taking into consideration the *Memorandum* filed by petitioner on January 29, 2008[26], *sans* respondent's *Memorandum*.

Hence, this decision.

As stipulated by the parties, the issues[27] for this Court's resolution are as follows:

"1. Whether or not Petitioner's claim for refund or tax credit is substantiated by documentary evidence.

2. Whether or not the sales discount granted by the Petitioner to senior citizens on their purchases of medicine should be treated as tax credit or merely as a deduction from gross income.

3. Whether or not Petitioner actually granted and is entitled to the issuance of a tax credit certificate in a total amount of P11,788,585.08 sales representing the discounts it granted to senior citizens on their purchases of medicines in the year 2003."

The Court will first resolve the question of whether or not the sales discount granted to senior citizens on purchases of medicine should be treated as tax credit or deduction from gross income.

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

> "**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*)
>
> "**SECTION 2. Definitions.** — For purposes of these regulations:
>
> xxx xxx xxx

[25] Docket, pp. 241
[26] Docket, pp. 224-238
[27] Pars. 1-3, JSF, Docket, p. 49

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)*

"**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."

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.

Considering that this Court's first and fundamental duty is the application of the law according to its express terms, it bears stressing that rules and regulations issued by the administrative officials to implement a law cannot go beyond the terms and provisions of the latter.[28] For while the interpretation placed upon a law by the executive officers is entitled to

---

[28] People vs. Lim, 108 Phil. 1094 (1960)

great respect by the courts, nevertheless, it is not conclusive and will be ignored if judicially found to be erroneous.

Thus, in the case of **Commissioner of Internal Revenue vs. Central Luzon Drug Corporation**[29], the Supreme Court ruled in this wise:

> "**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."

Similarly, the High Tribunal already declared in the case of **Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (formerly known as Elmas Drug Co.)**[30] that Revenue Regulations No. 2-94 is void for its failure to conform to the law it sought to implement. Accordingly, the 20% sales discounts granted to qualified senior citizens must be treated as tax credits pursuant to R.A. No. 7432, not as deductions from gross income as provided in Revenue Regulations No. 2-94.

Nevertheless, it must be noted that R.A. No. 7432 has been amended by Republic Act No. 9257, otherwise known as the "Expanded Senior Citizens Act of 2003".

With this amendment, the 20% discount is treated in the following manner:

> "The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: *Provided,* That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. *Provided, further,* That the total amount of the claimed tax deduction net of value added tax, if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and the provisions of the National Internal Revenue Code, as amended."[31]

---

[29] G.R. No. 159647, April 15, 2005
[30] G.R. No. 148083, July 21, 2006
[31] Last Paragraph, Section 4 of RA 9257

Accordingly, the 20% sales discount granted by establishments to qualified senior citizens is to be treated as tax deductions, and no longer as a tax credit.

Be that as it may, it was R.A. No. 7432 that was in effect at the time petitioner granted the 20% sales discount; thus, R.A. No. 7432 governs the result of this case.

The Court now proceeds to resolve the first and third issues.

In order to prove that it actually granted the 20% sales discounts to qualified senior citizens, petitioner presented its Schedule of Sales (Net of VAT) for 2003[32], Schedule of Prepaid Income Tax (OSCA) for 2003[33], cash slips evidencing the purchases of medicines by senior citizens for the year 2003[34], and sample BIR and BFAD Special Record Books for sales discounts granted by petitioner to senior citizens in taxable year 2003[35].

Based on the Independent CPA's Report[36], the total sales discounts given to senior citizens for taxable year 2003 were as follows:

Branch	Amount per Books	Amount per Audit	Variance
Naga Elias	1,877,126.76	2,058,437.80	(181,311.04)
Legaspi Rizal	751,487.46	878,572.48	(127,085.02)
Daet Panotes	549,497.54	538,550.56	10,946.98
Naga Abella	1,534,862.29	1,656,453.07	(121,590.78)
Iriga JP Rizal	997,581.68	704,283.81	293,297.87
Masbate Tara	297,871.56	526,982.95	(229,111.39)
Omega Gold Pili	236,599.65	262,709.37	(26,109.72)
Daet Lukban	1,135,662.20	804,177.69	331,484.51
Tabaco Ziga	477,691.65	496,198.15	(18,506.50)
Sorsogon	1,217,449.60	1,012,848.58	204,601.02
Polanqui	668,632.70	669,724.48	(1,091.78)
Naga Penafrancia	1,270,847.43	1,195,673.67	75,173.76
Bulan T. De Castro	213,652.56	201,036.17	12,616.39
Nabua	404,167.36	386,656.70	17,510.66
Lano Lukban	215,362.99	207,708.56	7,654.43
Legaspi Old	83,646.44	72,456.89	11,189.55
Total	**11,932,139.87**	**11,672,470.93**	**259,668.94**

[32] Exhibit "U"
[33] Exhibit "V"
[34] Exhibit "Y" (including sub-markings)
[35] Exhibit "Z"
[36] Exhibit "AA"

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 2003 reveals that the Report of the Independent CPA is in order. It is observed though that in the said Report, the 20% sales discounts granted to qualified senior citizens for taxable year 2003 wherein the required details for the issuance of cash slips are complete amounted only to P11,672,470.93, which shall be further reduced by excluding the 10% VAT of P1,061,133.72 included therein. Hence, the resulting amount of P10,611,337.21 represents valid 20% sales discounts granted by petitioner to qualified senior citizens for taxable year 2003.

For taxable year 2003, petitioner reported as sales in its Annual Income Tax Return[37] the amount of P535,746,816.00, which was likewise reflected in its Audited Financial Statements[38] for the same taxable year. Such sales amount of P535,746,816.00 included the gross sales related to the 20% discount of P10,611,337.21 per the Court's examination of petitioner's Cash Receipts and Sales Book[39], as well as, its General Ledger[40]. Evidently, the gross sales to senior citizens, corresponding to the claimed 20% sales discount of P10,611,337.21, formed part of petitioner's taxable income for taxable year 2003.

Since petitioner had an income tax liability for taxable year 2003 in the amount of P877,277.00 and failed to substantiate its prior year's excess credits of P17,064,034.00; the claimed 20% sales discounts of P10,611,337.21 shall be partially applied against the income tax due of P877,277.00. Therefore, petitioner's unused tax credits arising from the 20% sales discounts it granted to senior citizens for taxable year 2003 amounted only to P9,734,060.21, computed as follows:

Gross Income	P 43,863,833.00
Less: Deductions	53,448,903.00
Taxable Income	P (9,585,070.00)

[37] Exhibit "C"
[38] Exhibit "D"
[39] Exhibit "EE"
[40] Exhibit "DD"

Minimum Corporate Income Tax (MCIT) Due	P	877,277.00
Less: Tax Credits		
20% Sales Discounts Granted		
to Senior Citizens		10,611,337.21
Excess Tax Credits	**P**	**9,734,060.21**

WHEREFORE, with the foregoing disquisitions, the *Petition for Review* is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P9,734,060.21.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division