REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CENTRAL LUZON DRUG CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6054

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 15 2002

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P2,660,829.00 representing overpaid income tax for the year ended December 31, 1997, arising from the alleged erroneous interpretation of the respondent of the word "tax credit" used in Section 4(a) of Republic Act No. 7432.

The undisputed facts of the case are as follows:

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal office at MAB Square, Dau, Mabalacat, Pampanga (Exhibit "A"). It is a retailer of medicines and other pharmaceutical products and a franchisee of Mercury Drug Corporation which operates eight (8) drugstores located in Balanga, Bataan; Mabalacat, Pampaga; Camiling, Tarlac; Arayat, Pampanga; Maharlika, Cabanatuan City; Apalit, Pampanga; Tarlac, Juan Luna; and Balanga, Paterno; under the business name and style of "Mercury Drug" (Exhibits "B" to "H"). It is duly licensed to

271

operate drugstores by the Bureau of Food and Drugs, the local government units where its drugstores are located, the Department of Trade and Industry and the Bureau of Internal Revenue.

For the year 1997, petitioner granted the amount of P2,798,508.00 as 20% sales discounts to qualified senior citizens on their purchases of medicines pursuant to Section 4 of Republic Act 7432, otherwise known as "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes", to quote:

> **SEC. 4.** ***Privileges for the Senior Citizens.*** – The senior citizens shall be entitled to the following:
>
> a. <u>the grant of twenty percent (20%) discount from</u> all establishments relative to utilization of transportation services, hotels and similar lodging establishments, restaurants and recreational centers and <u>purchase of medicines anywhere in the country; Provided, that private establishments may claim the cost as tax credit.</u> (Underlining supplied).

The cost of the 20% discount was treated by petitioner in its books of accounts as a deduction from gross income for purposes of computing the income tax in compliance with the provisions of Sections 2(i) and 4 of Revenue Regulations No. 2-94 which implemented the aforesaid law, to wit:

> **SEC. 2. DEFINITIONS.** For purposes of these regulations:
>
> xxx xxx xxx
>
> i. <u>*Tax Credit.* – refers to the amount representing the 20% discount granted to a qualified senior citizen</u> 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

272

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.

SEC. 4. ***RECORDING/BOOKKEEPING REQUIREMENTS FOR PRIVATE ESTABLISHMENTS.*** – x x x.

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. (Underlining supplied).

On April 15, 1998, petitioner filed its 1997 Corporation Annual Income Tax Return reflecting, among others, a nil income tax liability due to net loss incurred from the operations in the amount of P2,405,140.00 (Exhibit "K", inclusive of sub-markings). The 1997 income tax return was filed by petitioner under protest (Exhibit "L").

On March 19, 1999, petitioner filed with respondent a claim for refund or credit of overpaid income tax for the taxable year 1997 in the amount of P2,660,829.00 representing the net effect of the twenty percent (20%) sales discount granted to qualified senior citizens treated as tax credit instead of as a mere deduction from gross income, computed as follows: (Exhibit "M")

SALES, Net		P176,742,607.00
Add: Cost of 20% Discount to Senior Citizens		2,798,508.00
SALES, Gross		P179,541,115.00
LESS COST OF SALES		
Merchandise inventory, beg.	P 20,905,489.00	
Purchases	168,762,950.00	
Merchandise inventory, end	(.27,281,439.00)	162,387,000.00
GROSS PROFIT		P 17,154,115.00
Miscellaneous income		402,124.00

TOTAL INCOME	P 17,556,239.00
Less: Operating expenses	16,913,699.00
NET INCOME BEFORE INCOME TAX	P 642,540.00
INCOME TAX DUE (35%)	P 137,679.00
Less: TAX CREDIT	
(Cost of 20% Discount to Senior Citizens)	2,798,508.00
INCOME TAX PAYABLE	P 2,660,829.00
INCOME TAX ACTUALLY PAID	0.00
TAX REFUNDABLE/OVERPAID INCOME TAX	P 2,660,829.00

Relying on the clear mandate of RA 7432, petitioner lodged its appeal with this Court on April 6, 2000, in order to seek judicial interpretation and to toll the running of the two-year period under the law.

In his Answer, respondent raised the following Special and Affirmative Defenses:

> 4.) Revenue Regulations No. 64 did not alter, modify or amend the intent of the law to consider/treat the 20% discount granted to qualified senior citizens as deductible cost against petitioner's gross income and not 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 on 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 of 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 by deduction

274

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 P2,660,829.00 being claimed by petitioner as alleged sales discounts to senior citizens on their purchases of medicines for taxable year 1997 is not properly documented;

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 tax refund/credit; and

11.) Claims for refund are strictly construed against the claimant for the same partake the nature of exemption from taxation.

The issues jointly stipulated by the parties are as follows:

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

2. Whether or not Petitioner's claim for refund/tax credit for taxable year 1997 is substantiated by documentary evidence; and

3. Whether or not Petitioner is entitled to a tax credit/refund in the amount of TWO MILLION SIX HUNDRED SIXTY THOUSAND EIGHT HUNDRED TWENTY NINE PESOS (P2,660,829.00).

Anent the first issue, the Court in a number of analogous cases has consistently ruled that the 20% sales discounts granted to qualified senior citizens should be treated as tax credit instead of as a mere deduction from gross income. These cases are chronologically enumerated hereunder:

Case Title	CTA Case No.	Date Promulgated
Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue,	5367	February 16, 1998
Del Rosario Drug Corporation vs. Commissioner of Internal Revenue	5357	April 6, 1998
Baliuag Drug Corporation vs. Commissioner of Internal Revenue	5365	May 13, 1998
M.E. Holding Corporation vs. Commissioner of Internal Revenue	5314	August 17, 1998
Trinity Franchising & Management Corporation vs. Commissioner of Internal Revenue	5313	August 18, 1998
Elmas Drug Corporation vs. Commissioner of Internal Revenue	5311	August 27, 1998
Tropical Hut Food Market, Inc. vs. Commissioner of Internal Revenue	5312	May 28, 1999
Vas Salus Drug Corporation vs. Commissioner of Internal Revenue	5509	November 26, 1999
Central Luzon Drug Corporation vs. Commissioner of Internal Revenue	5582	April 24, 2000
Southern Luzon Drug Corporation (formerly known as Laguna Drug Corporation) vs.Commissioner of Internal Revenue	5583	April 24, 2000
ME Holding Corporation vs. Commissioner of Internal Revenue	5604	April 25, 2000
Cagayan Valley Drug Corporation (formerly known as Vas Salus Drug Corporation) vs. Commissioner of Internal Revenue	5581	April 26, 2000

Trinity Franchising & Management Corporation vs. Commissioner of Internal Revenue	5605	May 30, 2000
Mercury Drug Corporation vs. Commissioner of Internal Revenue	5583	April 24, 2000
Bicolandia Drug Corporation (formerly known as Elmas Drug Corporation) vs. Commissioner of Internal Revenue	5599	October 10, 2000
Mercury Drug Corporation vs. Commissioner of Internal Revenue	5612	January 9, 2001
Tropical Hut Food Market, Inc. vs. Commissioner of Internal Revenue	5600	February 8, 2001
Cagayan Valley Drug Corporation (formerly known as Vas Salus Drug Corporation) vs. Commissioner of Internal Revenue	5769	February 8, 2001
Bicolandia Drug Corporation (formerly known as Elmas Drug Corporation) vs. Commissioner of Internal Revenue	5768	February 12, 2001
Central Luzon Drug Corporation vs. Commissioner of Internal Revenue	5767	February 12, 2001
M.E. Holding Corporation vs. Commissioner of Internal Revenue	5772	February 12, 2001

In the aforementioned cases the Court elucidated the legal issue in this wise:

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.

277

> To be valid, an administrative regulation must not be in contravention but should conform to the standards that the law prescribes (*Tayug Rural Bank s. 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.
>
> 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 deduction 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 cases of this nature. **(Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357, dated April 6, 1998, *supra*)**

The preceding declaration was also affirmed by the Court of Appeals in several cases, the most recent of which is entitled *Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (formerly known as Elmas Drug Corporation), CAT-G.R. SP No. 63446, promulgated on September 20, 2001.* Pertinent portions of the said decision read as follows:

> (T)he law is clear in this case. As stated earlier, the granting by private establishments of 20% discount to senior citizens entitles them to "**claim the cost as tax credit**." Any interpretation substituting the phrase "tax credit" to "deduction from gross income tax" is unwarranted. Tax

278

> deduction and tax credit have different connotations and application. In the former, the taxes are deducted from the gross income in computing the taxable income, while in the latter, the taxes are deducted from the income tax itself. In other words, a tax credit entitles a corporation or establishment to deduct directly from the income tax due the cost of the 20% sales discount given to senior citizens; while a deduction from "gross income" merely entitles the establishment or corporation to deduct the cost of the 20% sales discount given to senior citizens after arriving at the "gross sales less returns, discounts and allowances and costs of goods sold".
>
> The construction given by petitioner in Revenue Regulations No. 2-94 issued to implement section 4(a) of R.A. No. 7432 which provides that the 20% discount granted to senior citizens by private establishments shall be "deducted from their gross income" is clearly beyond the meaning of the phrase "tax credit". Hence, there being an obvious dichotomy between the two phrases, sections 2(i) and 4 of Revenue Regulation No. 2-94 cannot be given effect. (see also: *Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946, dated October 19, 1999; Trinity Franchising and Management Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 60269, April 4, 2001; The Commissioner of Internal Revenue vs. Bicolandia Drug Corporation, CA-G.R. SP No. 62824, May 3, 2001; Central Luzon Corporation vs. Commissioner of Internal Revenue, CA-G.R,. SP No. 60057; May 31, 2001).*

The legal issue having been settled, we shall now proceed to the second issue which dwells on the question of whether or not the claim for refund/credit of the petitioner is properly substantiated by documentary evidence.

Records show that petitioner seasonably filed its claim for refund within the two-year prescriptive period from the date of payment of the tax. The letter request for refund/credit was filed with the respondent on March 19, 1999, while the petition for review was instituted on April 6, 2000. The counting of the two-year period commenced on April 15, 1998, the date when petitioner filed its final adjustment return. The date of filing of the final adjustment return is the reckoning date since the case involves an overpaid income tax (*Citibank N.A. vs. Cout of Appeals and the Commissioner of Internal*

279

Revenue, 280 SCRA 459). Various cash slips were also presented by petitioner in order to prove the 20% sales discounts given to qualified senior citizens (Exhibit "S"). However, based on the examination conducted by the commissioned independent CPA, Mr. Rene Amby Reyes, there were instances that the cash slips, supporting the discounts, enumerated in the summary lists of petitioner were missing and there were times that the cash slips although existing were not included in the summary of petitioner. Furthermore, some cash slips do not bear the senior citizens' ID number and others were mere photocopies (Exhibit "Q", inclusive of sub-markings). The court also agreed with the findings of disallowance made by the auditor in his report. However, after comparing the amount of 20% discount claimed in the Summary of Sales and Discounts to Senior Citizens for 1997 (Exhibit "R") with the audited amount of discount by the independent, CPA, the court noted some material discrepancies. There were instances that the amount of the discount reflected in the summary exceeded the amount supported by cash slips or vice-versa. For example, on page 2 of the summary, the total amount claimed by petitioner was P7,664.89 while the audited amount was only P6,798.03. On page 19, the amount of discount claimed in the summary was P7,991.59 while the corresponding audited amount was P8,020.09. Therefore, the Court deemed it proper to consider the lesser of the two amounts with the proper supporting documents because the taxpayer cannot be refunded more than what was prayed for in the petition for review. Thus, out of the claimed 20% sales discount of P2,798,508.00 for the year 1997, only the sum of P2,514,484.63 was properly substantiated for refund purposes (see Annex A for details).

Below is a re-computation of overpaid income tax of Petitioner for the year 1996:

SALES, Net		P176,742,607.00
Add: 20% Sales Discount to Senior Citizens		2,798,508.00
SALES, Gross		P179,541,115.00
LESS COST OF SALES		
Merchandise inventory, beg.	P 20,905,489.00	
Purchases	168,762,950.00	
Merchandise inventory, end	(27,281,439.00)	162,387,000.00
GROSS PROFIT		P 17,154,115.00
Add Miscellaneous income		402,124.00
TOTAL INCOME		P 17,556,239.00
Less: Operating expenses		16,913,699.00
NET INCOME		P 642,540.00
Less: Income subjected to final tax		249,172.00
NET TAXABLE INCOME		P 393,368.00
INCOME TAX DUE (35%)		P 137,679.00
Less: TAX CREDIT (Cost of 20% Discount to Senior Citizens)		2,514,484.63
INCOME TAX PAYABLE		(P 2,376,805.63)
INCOME TAX ACTUALLY PAID		0.00
INCOME TAX REFUNDABLE		(P 2,376,805.63)

WHEREFORE, in view of the foregoing, the instant petition for review is hereby ***PARTIALLY GRANTED.*** Respondent is **ORDERED** to **ISSUE** A TAX CREDIT CERTIFICATE in the amount of P2,376,805.63 in favor of petitioner.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

281

I CONCUR:

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

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge