REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ST. WILLIAM DRUG CORPORATION, *Petitioner,*	**C.T.A. E.B. NO. 268 (C.T.A. CASE NO. 6928)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 17 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

In cases of conflict between the law and the rules and regulations implementing the law, the law shall always prevail. Should Revenue Regulations deviate from the law they seek to implement, they will be struck down *[Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (formerly known as Elmas Drug Co)., 496 SCRA 176].*

THE CASE

This is a Petition for Review filed by St. William Drug Corporation (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 October 12, 2006 denying the Petition for Review and the Resolution dated January 11, 2007 denying petitioner's Motion for Reconsideration rendered by the First Division of this Court in C.T.A. Case No. 6928. The respective dispositive portions of the Decision and Resolution read as follows:

> "**IN VIEW OF THE FOREGOING**, the Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED**."

> "**IN VIEW OF THE FOREGOING**, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

The facts are undisputed.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at Laoag City Commercial Complex, F.R. Castro Avenue, corner Villanueva Street, Laoag City. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue with office address at BIR National Office Building, Diliman, Quezon City where he may be served with summons, notices and other legal processes.

As a franchisee under the business name and style of "Mercury Drug", petitioner is duly licensed to operate drug stores by the Department of Trade and Industry, the Bureau of Food and Drugs, and the local government unit of Laoag City.

On April 15, 2002 and April 15, 2003, petitioner filed its Annual Income Tax Returns under protest for taxable years 2001 and 2002, respectively, paying the respective amounts of P89,044.75 and P90,990.21, as income taxes.

Instead of claiming the full amount of the twenty percent (20%) discount it granted to qualified senior citizens as tax credit/refund, petitioner was only able to claim the said amount as a deduction from gross income, pursuant to *Revenue Regulations No. 2-94* issued by respondent.

On February 19, 2004 or within the period of two (2) years from the filing of the Annual Income Tax Returns for taxable years 2001 and 2002, petitioner filed with respondent a claim for tax credit/refund in the total amount of P468,949.88, representing the cost of twenty (20%) percent discount granted to qualified senior citizens on their purchases of medicines during the period from January 1, 2001 and 2002 taxable years.

On April 13, 2004, petitioner filed a Petition for Review before this Court to avoid prescription due to respondent's inaction on the claim for tax refund/credit.

In his Answer filed on May 18, 2004, respondent alleged, by way of special and affirmative defenses, that 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 citizens as deduction from petitioner's gross income and not as credit against its tax liability as petitioner insists; 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; and petitioner miserably failed to show that the total amount of P468,949.88, claimed as tax credit for taxable years 2001 and 2002, was erroneously or illegally collected or that the same was properly documented.

After trial on the merits, the First Division rendered the assailed Decision on October 12, 2006 denying the Petition for Review for insufficiency of evidence.

Not satisfied, petitioner moved for a reconsideration of the same. On January 11, 2007, the First Division denied petitioner's "Motion for Reconsideration".

On February 15, 2007, petitioner filed the instant Petition For Review.

On March 5, 2007, We required respondent to file his comment on the petition, within ten (10) days from notice.

On March 16, 2007, respondent filed his Comment.

Hence, the petition is now deemed submitted for decision.

ISSUES

Petitioner raised the same issues, as agreed upon by the parties in their Joint Stipulation of Facts and Issues, for this Court's consideration:

I

WHETHER THE TWENTY (20%) PERCENT DISCOUNT GRANTED TO QUALIFIED SENIOR CITIZENS ON THEIR PURCHASES OF MEDICINES SHOULD BE TREATED AS A TAX CREDIT 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.

II

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 SEVEN HUNDRED NINETEEN THOUSAND THREE HUNDRED FIFTY FIVE AND 85/100 PESOS (P719,355.85).

III

WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX CREDIT/REFUND IN THE AMOUNT OF FOUR HUNDRED SIXTY EIGHT THOUSAND NINE HUNDRED FORTY NINE AND 88/100 PESOS (P468,949.88) 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.

In addition, petitioner raised the principal issue for the resolution of this Court:

> WHETHER OR NOT THE PETITIONER IS REQUIRED BY REPUBLIC ACT NO. 7432 OR THE SENIOR CITIZENS LAW TO FILE ITS ANNUAL INCOME TAX RETURNS AND TO PROVE THAT ITS NET SALES TO QUALIFIED SENIOR CITIZENS WERE INCLUDED IN ITS FINANCIAL STATEMENTS AND SAID TAX RETURNS BEFORE IT CAN CLAIM FOR REIMBURSEMENT IN THE FORM OF TAX CREDIT FOR THE DISCOUNTS IT GRANTED.

Principal Issue

The principal issue posed for resolution by this Court *En Banc* is whether or not petitioner is required by *Republic Act No. 7432* (hereafter *"RA No. 7432")* to file its Annual Income Tax Returns and to prove that its net sales to qualified senior citizens were included in its financial statements and said tax returns before it can claim for reimbursement in the form of tax credit for the discounts it granted.

THE COURT *EN BANC'S* RULING

The petition has no merit.

After a careful examination of the arguments raised in the instant petition, the Court *En Banc* finds that the issues raised by petitioner are a mere rehash of its Motion for Reconsideration filed in C.T.A. Case No.

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6928 and present no new arguments nor new matters which have not been considered and passed upon by the First Division in the assailed Decision and Resolution. Nevertheless, the Court *En Banc* will discuss them in *seriatim*.

Petitioner mainly contends that it is entitled to a tax credit as the First Division resolved the first and second issues in favor of petitioner. Further, petitioner maintains that the finding of the First Division that it failed to prove that the "Net Sales to Senior Citizens" were actually declared in its Annual Income Tax Returns for taxable years 2001 and 2002 is erroneous. Petitioner argues that the testimonies of its witnesses which were not rebutted during the trial were unmistakably clear that the net sales made to qualified senior citizens under the Senior Citizens Law were recorded in the Cash Slips *(Exhibits "AA" and "EE", with submarkings)*, Special Record Books *(Exhibits "BB" and "FF", with submarkings)*, and Cash Receipts Books *(Exhibits "CC" and "GG", with submarkings)* on a daily basis. Moreover, the Summaries of the Cash Receipts Books, net of 20% discounts granted by petitioner to qualified senior citizens under the Senior Citizens Law and the value-added tax were recorded in petitioner's General Ledgers *(Exhibits "DD" and "HH", with submarkings)* as

"Sales" while the annual total amounts in the General Ledgers were presented as "Net Sales" in petitioner's Audited Financial Statements *(Exhibits "K" and "Y", with submarkings)* and Annual Income Tax Returns *(Exhibits "B" and "L", with submarkings)* for taxable years 2001 and 2002.

On the other hand, in his Comment respondent contends that the only real issue raised in the petition is the above-mentioned principal issue which was clearly and definitely resolved by the First Division in its assailed decision dated October 12, 2006.

As regards the first and second issues, the Supreme Court has already settled the discrepancy between the pertinent provisions of *RA No. 7432* and Revenue Regulations No. 2-94 (hereafter *"RR No. 2-94"*) in a number of cases, 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 grant are void. Basic is the rule that administrative regulations cannot amend or revoke the law." *(Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, 456 SCRA 414)*

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In the more recent case of *Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (496 SCRA 176),* the Supreme Court ruled that Revenue regulations *No. 2-94* is null and void, to wit:

> "From the above discussion, it must be concluded that Revenue Regulations No. 2-94 is null and void for failing to conform to the law it sought to implement. In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law."

Pursuant to the aforequoted Supreme Court decisions, the 20% sales discounts granted to qualified senior citizens shall be treated as tax credits, conformably to *RA No. 7432,* and not merely as deductions from gross sales, as provided in *RR No. 2-94.*

Corollarily, the Supreme Court elucidated the reason for the Senior Citizen Discount. Thus:

> " Reason for the Senior Citizen Discount:
> The Law, Not Prompt Payment
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> A distinguishing feature of the implementing rules of RA 7432 is the private establishment's outright deduction of the discount from the invoice price of the medicine sold to the senior citizen. It is, therefore, expected that for each retail sale made under this law, the discount period lasts no more than a day, because such discount is given-and the net amount thereof collected-immediately upon perfection of the sale. Although prompt payment is made for an arm's length transaction by the senior citizen, the real and compelling

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reason for the private establishment giving the discount is that the law itself makes it mandatory.

What RA 7432 grants the senior citizen is a mere discount privilege, not a *sales discount* or any of the above discounts in particular. Prompt payment is not the reason for (although a necessary consequence of) such grant. To be sure, the privilege enjoyed by the senior citizen must be equivalent to the *tax credit* benefit enjoyed by the private establishment granting the discount. Yet, under the revenue regulations promulgated by our tax authorities, this benefit has been erroneously likened and confined to a *sales discount*.

To a senior citizen, the monetary effect of the privilege may be the same as that resulting from a *sales discount*. However, to a private establishment, the effect is different from a simple reduction in price that results from such discount. In other words, the *tax credit* benefit is not the same as a *sales discount*. To repeat from our earlier discourse, this benefit cannot and should not be treated as a *tax deduction*.

To stress, the effect of a *sales discount* on the *income statement* and *income tax return* of an establishment covered by RA 7432 is different from that resulting from the *availment* or *use* of its *tax credit* benefit. While the former is a deduction *before*, the latter is a deduction *after*, the *income tax* is computed. As mentioned earlier, a discount is not necessarily a *sales discount*, and a *tax credit* for a simple discount privilege should not be automatically treated like a *sales discount*. *Ubi lex non distinguit, nec nos distinguere debemus*. Where the law does not distinguish, we ought not to distinguish.

Sections 2.i and 4 of Revenue Regulations No. (RR) 2-94 define *tax credit* as the 20 percent discount deductible from *gross income* for *income tax* purposes, or from *gross*

> *sales* for VAT or other percentage tax purposes. In effect, the *tax credit* benefit under RA 7432 is related to a *sales discount*. This contrived definition is improper, considering that the latter has to be deducted from *gross sales* in order to compute the *gross income* in the *income statement* and cannot be deducted again, even for purposes of computing the *income tax*.
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> When the law says that the cost of the discount may be claimed as a *tax credit*, it means that the amount – when claimed – shall be treated as a reduction from any tax liability, plain and simple. The option to avail of the *tax credit* benefit depends upon the existence of a tax liability, but to limit the benefit to a *sales discount* – which is not even identical to the discount privilege that is granted by law – does not define it at all and serves no useful purpose. The definition must, therefore, be stricken down." *(Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, supra)*

The third and fourth issues, being interrelated, will be discussed jointly. This Court finds no merit on petitioner's claim that it is entitled to a tax credit/refund in the amount of P468,949.88, allegedly representing the cost of the 20% 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 taxable years 2001 and 2002.

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 eighty percent (80%) of the sales made to senior citizens (hereafter "Net Sales to Senior Citizens") were declared as part of its taxable income in order to be entitled to its claim for refund/credit.

A perusal of the records shows that petitioner presented its Cash Receipts Books *(Exhibits "CC" and "GG")* for taxable years 2001 and 2002 showing the transactions from January 2001 to December 2002, Special Records Books *(Exhibits "BB" and "FF")*, and General Ledgers *(Exhibits "DD" and "HH")* for the same taxable years, in order to prove that their Net Sales to Senior Citizens were declared as part of its taxable income. However, the Court finds that petitioner failed to actually declare in its Annual Income Tax Returns for taxable years 2001 and 2002 *(Exhibits "B-3" and "L-3")* its Net Sales to Senior Citizens.

As aptly ruled by the First Division:

> "For taxable years 2001 and 2002, petitioner reported sales of P65,525,846.97 and P69,317,984.31, respectively, under Item 14 pertaining to "Sales/Revenue/Receipts/Fees" (Schedule 1) in its Annual Income Tax Returns. These sales were likewise reflected in petitioner's Audited Financial Statements for the same tax years. However, petitioner failed to show which part of the reported sales comprised of the "Net Sales to Senior Citizens." To be more precise, petitioner failed to present a detailed breakdown of its daily net sales as reflected in the Cash Receipts Books. The detailed breakdown would have enable this Court to verify or trace whether the daily "Net Sales to Senior Citizens" as recorded

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> in the Special Records Books actually formed part of the daily net sales amounts in the Cash Receipts Books.
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> To illustrate, petitioner's "Net Sales to Senior Citizens" on January 12, 2001 amounted to P6,552.76 as recorded in the 2001 Special Record Book. On the other hand, petitioner's total sales (inclusive of output VAT) for the same date as appearing in the 2001 Cash Receipts Book amounted to P192,462.08. Considering that petitioner did not provide a breakdown for the latter amount, this Court could not determine whether or not the "Net Sales to Senior Citizens" in the amount of P6,552.76 appearing in the Special Records Books was indeed included in the total sales of P192,462.08 appearing in the Cash Receipts Books.
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> For failure of petitioner to sufficiently prove that its "Net Sales to Senior Citizens" were in fact declared in its Annual Income Tax Returns for taxable years 2001 and 2002, petitioner's claim cannot be granted. It cannot be over-emphasized that petitioner as claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund. Tax refunds, like exemptions, are construed strictly against the taxpayer."

Petitioner further contends that it presented witnesses to testify that the net sales to qualified senior citizens were included in its income declared in the Annual Income Tax Return. However, the documentary evidence presented by the petitioner does not show the same. Thus, in its Resolution dated January 11, 2007, the First Division correctly ruled:

> "Petitioner's arguments are unmeritorious. While petitioner presented witnesses to testify that the net sales to qualified senior citizens were included in its income declared in the Annual Income Tax Return, the documentary exhibits

> presented by petitioner, however, failed to show the same. Testimonial evidence is easy of fabrication and there is very little room for choice between testimonial evidence and documentary evidence. Thus, documentary evidence prevails over testimonial evidence in this case *(Government Services Insurance System vs. Court of Appeals, G.R. No. 52080, May 28, 1993)*."

It is a basic rule of evidence that between documentary and oral evidence, the former carries more weight *(Yap vs. Inopiquez Jr. 403 SCRA 141)*. Thus, petitioner's oral evidence cannot be given weight and credence if it is not supported by proper documentations and a clear and unmistakable proof of its allegations. In this case, petitioner failed to collaborate its testimonial and documentary evidence, as the latter does not contain the former's assertion.

Conformably to settled jurisprudence, petitioner, as claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund. Having failed to discharge the burden in this regard, petitioner's claim must, necessarily, fail.

For all the foregoing, We see no reason to reverse the assailed Decision and Resolution of 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

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

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