REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOUTHERN LUZON DRUG CORPORATION (formerly known as Laguna Drug Corporation),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6049

Promulgated:
MAY 14 2002

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DECISION

This case involves a claim for refund/tax credit in the amount of P336,024.00 allegedly representing overpaid income tax for taxable year 1997 due to the erroneous issuance of Revenue Regulations No. 2-94 treating the 20% sales discounts granted to qualified senior citizens under Republic Act No. 7432 as deductions from gross income instead of as tax credit.

The facts are as follows:

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal office address at No. 7 Mercury Avenue, Bagumbayan, Quezon City. In 1997, it operated two (2) drugstores, one located at the Ultimart Shopping Plaza, San Pablo City and the other at the Caedo Commercial Center, Batangas City, as franchisees under the business name and style of "Mercury Drug." Petitioner is duly licensed to 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 (pars. 1 to 3, Joint Stipulation of Facts).

171

Petitioner alleged that during the year 1997, it granted 20% sales discounts on medicines sold to qualified senior citizens totalling P516,959.00, in compliance with Section 4(a) of Republic Act No. 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," which provides, thus:

> "**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 establishments, restaurants and recreation centers and purchase of medicines anywhere in the country: *Provided*, That private establishments may claim the cost as tax credit."

In its 1997 income tax return filed on April 15, 1998 (Exhibit E), petitioner averred that it was forced to claim the 20% sales discounts to senior citizens of P516,959.00 as deduction from its gross income pursuant to the following provisions of Section 2(i) of Revenue Regulations No. 2-94, which implements Section 4(a) of R. A. No. 7432:

> "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 and other percentage tax purposes."

However, it is petitioner's view that Section 2(i) of Revenue Regulations No. 2-94 is erroneous considering that Section 4(a) of R.A. No. 7432 clearly provides that "the cost

12

of the 20% sales discounts to senior citizens may be claimed as tax credit" and not as mere deductions from gross income.

Thus, in its administrative claim for refund filed on March 19, 1999 (Exhibit G), petitioner computed its alleged 1997 income tax overpayment as follows:

Net Sales			P 62,133,031.00
Add:	20% Sales Discount to Senior Citizens		516,959.00
Gross Sales			P 62,649,990.00
Less:	Cost of Sales		
	Merchandise inventory, beginning	P 6,514,854.00	
	Purchases	59,175,262.00	
	Total merchandise available for sale	P 65,690,116.00	
	Less: Merchandise inventory, end	8,921,887.00	56,768,229.00
Gross Profit			P 5,881,761.00
Add:	Miscellaneous Income		76,107.00
Total Income			P 5,957,868.00
Less:	Operating Expenses		5,109,572.00
Net Income before Income Tax			P 848,296.00
Less: Income subjected to final tax			37,449.00
Net Taxable Income			P 810,847.00
Income Tax Due			P 283,796.00
Less:	Tax Credit (Cost of 20% Sales Disc. to Senior Citizens)		516,959.00
Income Tax Still Payable			P 233,163.00
Less:	Income Tax Actually Paid		102,861.00
Income Tax Refundable			P 336,024.00

There being no action on the request for refund/tax credit on the part of the respondent, petitioner filed the instant Petition on April 3, 2000 well within the two-year prescriptive period provided under Section 230 [now 229] of the Tax Code.

Respondent, in his Answer filed on May 8, 2000, advanced by way of Special and Affirmative Defenses that:

> "4.) The petitioner's claim for tax refund/credit is still undergoing administrative routinary investigation/examination by the respondent's Bureau;

173

5.) The alleged tax sought to be refunded was collected pursuant to law and pertinent BIR implementing rules and regulations; hence, the same is not refundable;

6.) Petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not ipso ***facto*** warrant the refund/credit;

7.) Claims for tax refund or tax credit are construed in ***strictissimi juris*** against the taxpayer as they partake the nature of an exemption from tax, and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure on the part of the petitioner to prove the same is fatal to its claim for refund/credit;

8.) Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the 1997 Tax Code."

In its memorandum, petitioner asserted that the respondent's definition of the term "tax credit" in paragraph (i) of Revenue Regulations No. 2-94 is contrary to Section 4, paragraph (a) of Republic Act No. 7432; that the intent of Congress is to treat the sales discounts granted to senior citizens as tax credit instead of mere deductions from gross income and that Sec. 2 par. (i) of Revenue Regulations No. 2-94 is a mere implementing administrative regulation and cannot modify, alter or amend the clear mandate of Section 4 of Republic Act No. 7432 which it seeks to implement.

Respondent, on his part, argued that Revenue Regulations No. 2-94 merely provides the guidelines for the implementation of Republic Act No. 7432 and it did not in any way amend, modify or alter the said law. According to respondent, Revenue Regulations No. 2-94 were issued pursuant to the power of the Secretary of Finance to promulgate rules and regulations and even recognized under Section 10 of Republic Act No. 7432 itself. Also, respondent alleged that since the 20% sales discount is not a tax paid to the government, the same cannot be refunded as tax credit in accordance with

174

Section 204(c) of the Tax Code, as amended. Lastly, respondent maintained that claims for tax refund are in the nature of tax exemptions and are to be strictly construed against the taxpayer.

Thus, the issues we are tasked to resolve are:

1. Whether or not the 20% sales discounts granted to qualified senior citizens on their purchases of medicines from petitioner should be treated as deductions from gross income pursuant to Revenue Regulations No. 2-94, or as tax credit deductible from the tax due pursuant to Republic Act No. 7432; and if the issue is resolved in favor of petitioner,
2. Whether or not petitioner has proven with sufficient evidence its claim for refund or tax credit.

We find for the petitioner.

Time and again, this Court has consistently held that the 20% sales discounts granted to qualified senior citizens should be treated as tax credit and not as mere deductions from gross income.

In the case of **Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367, promulgated on February 16, 1998,** we elucidated, thus:

> "The provision of Section 4 of R.A. 7432 is crystal clear – the 20% discounts granted to qualified senior citizens may be claimed as tax credit. And as a settled rule of statutory construction, when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says (***Marin vs. Nacianceno, 19 Phil. 238***). Construction and interpretation come only after it has been demonstrated that the application is impossible or inadequate without them (***People vs. Mapa, G.R. No. L-22301, August 30, 1967***).

174

> It is true that the respondent has the power of subordinate legislation effected by her issuance of implementing rules and regulations such as Revenue Regulations No. 2-94 in the case at bar, but the said power, is not without limit. The administrative regulation must not be in sharp conflict with the governing statute it seeks to implement (***Nestle Philippines, Inc. vs. Court of Appeals, et al, 203 SCRA 504***). Revenue Regulations No. 2-94 gave a new meaning to the phrase "tax credit", interpreting it to mean that the 20% discount granted to qualified senior citizens is an amount deductible from the establishment's gross sales, which is completely contradictory to the literal or widely accepted meaning of the said phrase, as an amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability (***Black Law's Dictionary***).
>
> xxx xxx xxx
>
> In view of such apparent discrepancy in the interpretation of the term "tax credit" the provisions of the law under R.A. 7432 should prevail over the subordinate regulation issued by respondent under Revenue Regulations No. 2-94."

Further, as correctly pointed out by petitioner in its memorandum (CTA records, pp. 156-158), the deliberations of the Bicameral Conference Committee Meeting on Social Justice held on February 5, 1992 which finalized the contents of Republic Act No. 7432 clearly show that the real intent of the lawmakers was to treat the sales discounts to senior citizens as tax credit rather than as deductions from gross income, thus:

> "THE CHAIRMAN, (Rep. Unico). By the way, before that ano, about deductions from taxable income. I think we incorporated there a provision na – on the responsibility of the private hospitals and drugstores, hindi ba?
>
> SEN. ANGARA. O, o.
>
> THE CHAIRMAN (Rep. Unico), So, I think we have to put in also a provision here about the deductions from taxable income of that private hospitals, di ba ganon 'yan?
>
> REP. AQUINO. Section 11 sa atin ano?
>
> THE CHAIRMAN, (Rep. Unico).

Puwede na. Yung about the private hospitals. Yung isiningit natin?

MS. ADVENTO. Singit na po ba 'yung 15% on credit . . . (inaudible/did not use microphone).

SEN. ANGARA. Hindi pa, hindi pa.

THE CHAIRMAN, (Rep. Unico) Ah, 'di pa ba naisama natin?

SEN. ANGARA. O, o. You want to insert that?

THE CHAIRMAN (Rep. Unico). Yung ang proposal ni Senator Shahani, e.

SEN. ANGARA. . . . in the case of private hospitals . . . they got the grant of 15% discount, provided that, the private hosp.tals can claim the expense as a tax credit.

REP. AQUINO. Yah . . . could be allowed as deductions in the perpetrations of . . . (inaudible) income . . .

SEN. ANGARA. I-tax credit na lang natin para walang cash-out ano?

REP. AQUINO O, o, tax credit, Tama, Okay. Hospitals ba o lahat ng establishments na covered?

THE CHAIRMAN. (Rep. Unico) Sa kuwan lang 'yon, as private hospitals lang.

REP. AQUINO. Ano ba 'yung establishments na covered?

SEN. ANGARA. Restaurant. . lodging houses, recreation centers.

REP. AQUINO. All establishments covered siguro?

SEN. ANGARA. From all establishments. Alisin na natin 'yung kuwan kung ganon. Can we go back to Section 4 ha?

REP. AQUINO. Oho.

SEN. ANGARA. Letter A. To capture that thought, we'll say the grant of 20% discount from all establishments et. cetera, et cetera, provided that said establishments – provided that private establishments may claim the cost as a tax credit. Ganon ba 'yon?

REP. AQUINO. Yah.

SEN. ANGARA. Dahil kung government, they don't need to claim it.

THE CHAIRMAN. (Rep. Unico). Tax Credit.

SEN. ANGARA. As a tax credit rather than as kuwan – deduction, Okay.

REP. AQUINO. Okay.

SEN. ANGARA. Sige, Okay. Di, subject to style na lang sa letter A."
(pp. 22-24 underscoring supplied)

The Court of Appeals affirmed our ruling in the following cases:

1. *Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946, promulgated October 19, 1999;*

2. *Trinity Franchising and Management Corporation vs. Commissioner of Internal Revenue, CA-GR. SP No. 60269, promulgated April 4, 2001;*

3. *The Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (formerly known as Elmas Drug Company), CA-G.R. SP No. 62824, promulgated May 3, 2001; and*

4. *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 60057, promulgated May 31, 2001.*

In the case of **Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 60057, dated May 31, 2001**, the Court of Appeals also ruled that the full amount and not only the cost of the 20% sales discounts to senior citizens should be the basis of the tax credit, to wit:

"Lastly, the concept of tax credit as just compensation, leads us to conclude that the term "cost" under Sec. 4(a) of R.A. 7432 refers to cost of acquisition, not the cost of medicines sold to senior citizens, which was already reduced by 20%. Just compensation is the full and fair equivalent of the property taken from the private owner by the expropriator. It is intended to fully indemnify the owner for the loss sustained. The actual, basis or

177

> market value of the property is the standard of just compensation. Among the factors considered are the cost of acquisition of the property, the current value of like properties and its actual or potential uses. Clearly, the cost of medicines sold to senior citizens, which is already discounted does not come close to the full and fair equivalent of the property taken. It should not be the basis of the tax credit."

Therefore, what is now left for us to determine is whether or not petitioner was able to sufficiently prove the factual aspect of its claim for refund.

The auditing firm, Vicente E. Reyes & Associates, through its Partner, Mr. Rene Amby Reyes, was commissioned by this Court pursuant to CTA Circular 1-95, as amended, to verify petitioner's claim. In its report dated October 2, 2000 (Exhibit M), Vicente E. Reyes & Associates certified that out of the claimed 20% sales discounts to senior citizens for 1997 of P516,959.00, only the amount of P511,885.58 was properly supported by cash slips. This Court finds the said report in order upon examination of the "Summary of Sales and Discounts to Senior Citizens for the year 1997" (Pre-marked Exhibit L) and petitioner's cash slips (Pre-marked as Exhibit K, with the cash slip numbers as sub-markings). However, since the substantiated amount of P511,885.58 is inclusive of VAT, it is but proper to exclude the 10% VAT or the amount of P46,535.05. Accordingly, only the amount of P465,350.53 or P465,351.00 shall become petitioner's allowable tax credit.

Records likewise reveal that petitioner actually deducted from its 1997 gross sales only the amount of P469,962.38 (Exhibit C-1) out of the total claim of P516,959.00 representing 20% sales discounts to senior citizens resulting to a 1997 net sales of P62,133,031.00. The latter amount is indicated in petitioner's audited financial statements as "S a l e s, net" (Exhibit D-1-a) and in Section C, Schedule 1 of its 1997 income tax return as "Gross Sales During The Year" (Exhibit E-1). As a result of said deduction, petitioner paid an income tax due of P102,861.00 on taxable income of P293,888.00 for 1997 (Exhibit E).

In computing petitioner's 1997 overpaid income tax, it becomes necessary to add back to petitioner's net sales of P62,133,031.00 the amount of P469,962.38 previously deducted from its gross sales, the reason being that the 20% sales discounts to senior citizens is no longer to be treated as deductions from gross income but rather as tax credit.

Consequently, a re-computation of petitioner's 1997 income tax liability using the figure of P465,351.00 as allowable tax credit will result to an overpaid income tax of P300,864.00, detailed as follows:

Net Sales			P 62,133,031.00
Add:	20% Sales Discount to Senior Citizens		469,962.38
Gross Sales			P 62,602,993.38
Less:	Cost of Sales		
	Merchandise inventory, beginning	P 6,514,854.00	
	Purchases	59,175,262.00	
	Total merchandise available for sale	P 65,690,116.00	
	Less: Merchandise inventory, end	8,921,887.00	56,768,229.00
Gross Profit			P 5,834,764.38
Add:	Miscellaneous Income		76,107.00
Total Income			P 5,910,871.38
Less:	Operating Expenses		5,109,572.00
Net Income before Income Tax			P 801,299.38
Less: Income subjected to final tax			37,449.00
Net Taxable Income			P 763,850.38
Income Tax Due			P 267,348.00
Less:	Tax Credits/Payment		
	1.) Cost of 20% sales discounts to senior citizens	P 465,351.00	
	2.) Creditable taxes withheld	47.00	
	3.) Final income tax payment per ITR	102,814.00	568,212.00
Income Tax Refundable			P 300,864.00

179

WHEREFORE, in view of all the foregoing, petitioner's claim for tax credit is hereby **GRANTED** but in the reduced amount of P300,864.00. Respondent Commissioner of Internal Revenue is **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of herein petitioner in the amount of **THREE HUNDRED THOUSAND EIGHT HUNDRED SIXTY FOUR PESOS** (P300,864.00) representing overpaid income tax for taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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

180