REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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NORTHERN LUZON DRUG CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7450

Members:

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

Promulgated:

OCT 23 2008 ; 2:40 pm

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DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

The instant Petition for Review filed seeks that judgment be rendered ordering the Respondent (1) to issue the corresponding tax credit certificate in its favor amounting to P17,371,575.98 representing unused tax credits earned for taxable year 2003 arising from 20% sales discounts it granted to senior citizens on their purchases of medicines pursuant to Republic Act No. 7432 and; (2) to accept the said amount as payment of its future tax liabilities.

THE FACTS

Petitioner Northern Luzon Drug Corporation is a domestic corporation organized and existing under the laws of the Philippines, with principal office address at No. 28 Shaw Boulevard, Pasig City.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Quezon City.

In 2003, petitioner operated fourteen (14) drug stores located in the following areas: Baguio; Bangued, Abra; Batac Washington; Candon National Highway; Baguio Session; Baguio Magsaysay; Baguio Center Mall; San Fernando, La Union; La Trinidad, Benguet; Tayug, Quezon; Mangaldan Rizal, Pangasinan; Dagupan Perez Blvd.; San Fernando Rizal; Calasiao Public Market; and Baguio Abanao.[1]

Petitioner is duly licensed to operate drug stores with the following government entities: Bureau of Food and Drugs; the local government units where the drugstores are located; the Department of Trade and Industry; and the Bureau of Internal Revenue.[2]

Pursuant to Republic Act No. 7432[3] (RA 7432) or the Senior Citizens Act, petitioner allegedly granted twenty percent (20%) sales discounts to qualified senior citizens. The pertinent provision of RA 7432 reads 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 establishments, restaurants and recreation centers and purchase of medicines anywhere in the country: Provided, That private establishments may claim the cost as tax credit.
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> xxx

On various dates[4], petitioner allegedly granted twenty percent (20%) sales discount amounting to P17,371,575.98 to qualified senior citizens on their purchases of medicines from the petitioner, pursuant to RA No. 7432 and its Implementing Rules and Regulations.

In its 2003 Annual Income Tax Return[5] filed on April 14, 2004, petitioner allegedly reported and treated the said discount as pre-paid tax credit.

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[1] Joint Stipulation of Facts, Rollo, p. 47
[2] Ibid.
[3] Otherwise known as "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes"
[4] January to December 2003

Petitioner filed on April 12, 2006 with respondent a request[6] for the issuance of a tax credit certificate in the amount of P17,371,575.98 equivalent to the twenty percent (20%) sales discounts granted by petitioner to qualified senior citizens for the period January to December 2003 in compliance with Republic Act No. 7432.

To date, respondent has not granted its aforementioned request. Hence, this petition filed on April 17, 2006.

Respondent interposed the following special and affirmative defenses in her Answer[7], to wit:

> "5. The claim for refund is still under examination by the [r]espondent Bureau of Internal Revenue;
>
> 6. The burden of proof is upon the [p]etitioner 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.

[5] Exhibits C and C-1
[6] Exhibits E and E-1
[7] Rollo, pp. 34-35

10. The power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed and by 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); [and]**

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 it is entitled to great respect and should ordinarily control the construction; it is so firmly embedded in our jurisprudence that no authorities need be cited to support it. (Phil. Assoc. of Free Labor Unions vs. BIR). Execute officials are presumed to have familiarized themselves with all consideration pertinent to the meaning and 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)**."

On February 28, 2008, petitioner submitted its memorandum. After trial on the merits, this case was submitted for decision on April 1, 2008 without respondent's Memorandum.

ISSUES

The jointly stipulated issues[8] of the parties include, to wit:

"1. Whether or not [p]etitioner actually granted and is entitled to the issuance of a tax credit certificate in the total amount of P17,371,575.98 sales representing the discounts it granted to senior citizens on their purchases of medicines in the year 2003[;]

2. Whether or not [p]etitioner's claim for refund or tax credit is substantiated by documentary evidence[; and]

3. Whether or not the sales discount granted by the [p]etitioner to senior citizens on their purchases of medicine should be treated as tax credit or merely as a deduction from gross income."

[8] IV. Issues of the Case, Joint Stipulation of Facts, Rollo, p. 48

THE COURT'S RULING

Whether or not [p]etitioner actually granted and is entitled to the issuance of a tax credit certificate in the total amount of P17,371,575.98 sales representing the discounts it granted to senior citizens on their purchases of medicines in the year 2003.

In order to prove that the 20% sales discounts was actually granted to qualified senior citizens, petitioner presented the following documents: General Ledger Book for 2003[9]; Cash Receipts and Sales Books for 2003[10]; Schedule of Sales (Net of VAT) for 2003[11]; Schedule of Prepaid Income Tax- OSCA for 2003[12]; cash slips evidencing the purchases of medicines by senior citizens for 2003[13]; and sample BIR and BFAD Special Record Books for sales discounts granted by petitioner to senior citizens in 2003[14]. The said sales discounts to senior citizens for the year 2003 were summarized[15] as follows:

Branch	Amount Per Book	Amount Per Audit	Variance
Baguio Session	4,753,707.92	4,065,363.66	688,344.26
Baguio Magsaysay	812,436.85	805,334.24	7,102.61
Bangued Partelo	1,228,468.54	1,231,176.48	(2,707.94)
Batac Washington	1,258,667.09	1,236,195.20	22,471.89
Candon Nat'l Hi-way	1,765,058.22	1,748,449.92	16,608.30
Center Mall Baguio	1,047,899.51	791,572.51	256,327.00
San Fernando, Quezon	2,218,707.18	1,935,310.94	283,396.24
La Trinidad	696,423.41	613,557.96	82,865.45
Tayug Quezon	1,038,848.13	1,033,859.22	4,988.91
Mangaldan Rizal	429,487.26	359,052.99	70,434.27
Dagupan Perez	1,406,383.35	1,267,210.97	139,172.38
San Fernando, Rizal	749,620.07	751,239.50	(1,619.43)
Calasiao Market	340,326.19	357,192.12	(16,865.93)
Baguio Abanao	1,171,973.30	1,253,223.43	(81,250.13)
Total	18,918,007.02	17,448,739.15	1,469,267.87

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[9] Exhibit "DD"
[10] Exhibit "CC"
[11] Exhibit "T"
[12] Exhibit "U"
[13] Exhibit "X" (including sub-markings)
[14] Exhibit "Y"
[15] Exhibit "Z"

Whether or not petitioner is entitled to the issuance of a tax credit certificate will be discussed jointly with the third issue.

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

Petitioner alleges that it granted the aggregate amount of P17,371,575.98 representing the 20% sales discounts to qualified senior citizens for the year 2003. As per findings of the Court-commissioned Independent CPA, the aggregate claim amounts to P17,448,739.15. However, the said amount must be reduced by 10% due to the Value-Added Tax included therein. Hence, the resulting amount of P15,862,490.14 represents the 20% sales discounts petitioner granted to qualified senior citizens for the year 2003.

In order to claim the amount of P15,862,490.14 as tax credit, petitioner must prove that the related gross sales to senior citizens (inclusive of the 20% sales discount) were declared as part of its taxable income.

A perusal of the records reveals that the petitioner declared the aggregate amount of P648,408,753.00 [in Item 14 (Sales, Revenues/Receipts/Fees)][16]. It was likewise reflected in petitioner's Audited Financial Statements for the year 2003, the amount of which includes the gross sales and the 20% discount of P15,862,490.14. The same is supported by petitioner's Cash Receipts and Sales Book[17] and General Ledger[18].

Clearly, the gross sales to senior citizens corresponding to the claimed 20% sales discount formed part of petitioner's taxable income for 2003.

To determine petitioner's refundable amount, it is necessary to look into its actual income payments for the year 2003. A close scrutiny of the records show that petitioner had an income tax liability for 2003 in the amount of P1,754,494.00. Moreover, petitioner failed to substantiate its prior year's excess credits amounting to P23,451,754.00. Hence,

[16] Exhibit "C"
[17] Exhibit "CC"
[18] Exhibit "DD"

the claimed P15,862,490.14 representing the 20% sales discount to senior citizens shall be partially applied against the income tax due. The resulting amount to be claimed is computed as follows:

Gross Income		P 61,566,486.00
Less:	Deductions	56,083,694.00
Taxable Income		P 5,482,792.00
Income Tax Due		P 1,754,494.00
Less:	Tax Credits	
	20% Sales Discounts Granted to Senior Citizens	15,862,490.14
Excess Tax Credits		**P 14,107,996.14**

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

Having been established that indeed, petitioner granted 20% sales discount to qualified senior citizens on their purchases of medicine, let us now determine whether the said discounts should be treated as a tax credit or merely a deduction of income.

The pertinent law where the treatment of the 20% sales discount to qualified senior citizens on their purchases of medicine would be:

"RA 7432

AN ACT TO MAXIMIZE THE CONTRIBUTION OF SENIOR CITIZENS TO NATION BUILDING, GRANT BENEFITS AND SPECIAL PRIVILEGES AND FOR OTHER PURPOSES.

xxx

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 medicines anywhere in the country: Provided, That private establishments may claim the cost as **tax credit**; (Emphasis Ours)

xxx"

From the foregoing, it is clear in the provision of the law that private establishments, like the petitioner, may claim the cost of granting 20% discount as Tax Credit to qualified senior citizens who availed of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and **purchase of medicine anywhere in the country**.

Respondent alleges that the correct interpretation of the abovementioned provision is contained in Revenue Regulations No. 2-94 (RR 2-94), which reads as follows:

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

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> 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.

xxx"

From the foregoing, respondent avers that the 20% sales discounts shall be deducted by the said establishments from their gross income for income tax and from their gross sales for VAT or other percentage taxes, whichever is applicable.

Respondent's interpretation of the provisions of RA 7432 is misplaced.

The Supreme Court held in *Commissioner of Internal Revenue vs. Bicolandia Drug Corporation*[19] that RR No. 2-94 is null and void for failing to conform to the law it sought to implement. The High Court further stated that 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.

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[19] G.R. No. 148083, July 21, 2006

Aside from the declaration of the nullity of RR No. 2-94, the Supreme Court, in affirming the provisions of RA 7432 said in *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*[20] that:

> "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. (Emphasis Ours)"

Pursuant to the rulings of the Supreme Court and consistent with the stand[21] of this Court, petitioner's sales discount to qualified senior citizens on their purchases of medicine for the year 2003 be treated as a tax credit.

The prayer that respondent will accept the said amount as payment of petitioner's future tax liabilities is redundant to the nature of tax credit certificates as defined in *Pilipinas Shell*[22], to wit:

> "In RR 5-2000, a tax credit is defined as "the amount due to a taxpayer resulting from an overpayment of a tax liability or erroneous payment of a tax due.
>
> "A TCC is a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed by the provisions of these Regulations."

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[20] G.R. No. 159647, April 15, 2005

[21] That the 20% sales discounts granted to senior citizens should be treated as tax credit and not as mere deductions from gross income; manifested in *Baliuag Drug Corp. v. Commissioner of Internal Revenue*, C.T.A. Case No. 6537, November 25, 2004, quoting the Decision of the CTA in the case of *Del Rosario Drug Corporation vs. Commissioner of Internal Revenue*, C.T.A. Case No. 5357, April 6, 1998

[22] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007

Based from the definition above, a TCC is an undertaking by the government acknowledging that a taxpayer is entitled to a certain amount of tax credit from an overpayment of income taxes. Hence, to order respondent to accept the tax credit certificate she will issue in favor of petitioner is unnecessary.

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FOURTEEN MILLION ONE HUNDRED SEVEN THOUSAND NINE HUNDRED NINETY SIX AND 14/100 PESOS (P14,107,996.14)**, representing unused tax credits earned for taxable year 2003 arising from 20% sales discounts it granted to senior citizens on their purchases of medicines pursuant to Republic Act No. 7432.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(On Leave)
LOVELL R. BAUTISTA
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
Chairman, First Division