REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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NORTHERN LUZON DRUG CORPORATION, Petitioner,	**C.T.A. CASE NO. 7612**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 11 2009; 10:55am

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DECISION

BAUTISTA, *J.*:

The Petition for Review seeks the issuance of tax credit certificate in the amount of P4,740,126.47, allegedly representing unused tax credits for taxable year 2004, arising from the twenty percent (20%) sales discounts granted by petitioner to senior citizens on purchase of medicines as provided for in Republic Act No. 7432.

Northern Luzon Drug Corporation (Petitioner) is a domestic corporation organized and existing under the laws of the Philippines, with principal office address at No. 28 Shaw Boulevard, Pasig City. It 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.[1]

[1] Pars. 1 and 3, Joint Stipulation of Facts (JSF), docket, p. 49.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue 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. He holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

In 2004, petitioner operated sixteen (16) drug stores located in 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 Boulevard; San Fernando Rizal; Calasiao Public Market; Baguio Abanao; Baguio Porta Vaga; and Dagupan A.B. Fernandez East.[2]

On various dates, during the period from January 1, 2004 to March 20, 2004, petitioner purportedly granted twenty percent (20%) sales discounts in the amount of P4,740,126.47[3] to qualified senior citizens on their purchases of medicines from petitioner, in compliance with Republic Act (R.A.) No. 7432 and its Implementing Rules and Regulations.

In its 2004 Annual Income Tax Return[4] filed on April 15, 2005, petitioner reported and treated the 20% sales discount of P4,740,126.47[5] as prepaid tax credit by declaring it as creditable tax withheld for the first three quarters.

On April 14, 2007, petitioner filed with respondent a request for the issuance of tax credit certificate in the amount of P4,740,126.47, equivalent to the 20% sales discounts granted to qualified senior citizens from January 1, 2004 to March 20, 2004.[6]

In order to comply with the two-year prescriptive period for filing claims for refund or issuance of tax credit certificate, petitioner filed the present Petition for Review on April 16, 2007[7].

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[2] Par. 2, JSF, docket, p. 49.
[3] Exhibit "W-1".
[4] Exhibits "C" and "C-1".
[5] Exhibit "C", line 27C.
[6] Exhibits "E" and "E-2".
[7] April 15, 2007 was a Sunday.

In his Answer[8] filed on June 1, 2007, respondent averred the following Special and Affirmative Defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
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> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
>
> 8. The grant of a claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
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> 9. 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, Aug. 2, 1991).
>
> 10. The instant petition for review was filed with this Honorable Court without the mandatory Resolution of the petitioner's Board of Directors authorizing the filing of the instant petition. Therefore, the instant petition was filed without the substantial compliance with the required certification on non-forum shopping per Sec. 5, Rule 7 of the New Rules of Civil Procedure, as amended."

The case was set for Pre-Trial on July 13, 2007.[9] Petitioner filed its Pre-Trial Brief[10] on July 6, 2007; while respondent filed his Pre-Trial Brief for the Respondent[11] on July 10, 2007.

During Pre-Trial on July 13, 2007, counsel for respondent admitted the filing of petitioner's Income Tax Return with the accompanying Financial Statements for taxable year 2004. Further, the parties stipulated that the only issue is whether or not the claim for tax credit is properly substantiated.[12]

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[8] Docket, pp. 34-36.
[9] Docket, p. 37.
[10] Docket, pp. 38-43.
[11] Docket, pp. 44-45.
[12] Docket, p. 48

In a Resolution[13] dated July 27, 2007, this Court approved the parties' Joint Stipulation of Facts[14] dated July 24, 2007 and adopted the stipulations of issues agreed and enumerated therein.

On January 22, 2008, petitioner filed a Motion to Avail of CTA Circular No. 1-95, as amended, by CTA Circular No. 10-97 in the Presentation of Voluminous Documents as Evidence[15], attaching therewith the curriculum vitae of Mr. Nunilon Perez Tagle; which the Court granted on January 29, 2008.[16]

The Independent CPA submitted his Final Report[17] on March 5, 2008.

On May 21, 2008, petitioner filed its Formal Offer of Documentary Evidence[18], submitting Exhibits "A" to "DD", inclusive of submarkings. This Court admitted all the aforementioned exhibits in a Resolution[19] dated July 25, 2008.

During the hearing on September 16, 2008, respondent's counsel manifested that he is submitting the case for decision based on the pleadings.

On September 19, 2008, the Court ordered the parties to file their respective Memorandum within thirty (30) days from September 16, 2008.[20]

On November 13, 2008, the case was submitted for decision, taking into consideration petitioner's Memorandum[21] filed on October 10, 2008, *sans* respondent's Memorandum.[22]

Hence, this Decision.

In their Joint Stipulation of Facts, the parties presented the following issues[23] for this Court's resolution:

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[13] Docket, p. 52.
[14] Docket, pp. 49-50.
[15] Docket, pp. 82-84.
[16] Docket, p. 87.
[17] Exhibit "EE".
[18] Docket, pp. 141-148.
[19] Docket, p. 311.
[20] Docket, p. 318.
[21] Docket, pp. 320-333.
[22] Docket, p. 334.
[23] Docket, p. 50.

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

2. Whether or not Petitioner actually granted and is entitled to the issuance of a tax credit certificate in the total amount of P4,740,126.47 sales representing the discounts it granted to senior citizens on their purchases of medicines from January 1, 2004 to March 20, 2004."

Simplified, the issue is whether or not petitioner is entitled to the grant of tax credit certificate in the amount of P4,740,126.47, representing the 20% sales discount granted to senior citizens on their purchase of medicines from January 1, 2004 to March 20, 2004, pursuant to R.A. No. 7432.

Republic Act No. 7432[24], otherwise known as the "Senior Citizens Act", specifically allows private establishments to claim as tax credit the amount of granted discounts. Section 4(a) of R.A. No. 7432 provides:

> "**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)*

Thus, in the case of **Commissioner of Internal Revenue vs. Central Luzon Drug Corporation**[25], 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 grant are void. Basic is the rule that administrative regulations cannot amend or revoke the law."

Nevertheless, R.A. No. 7432 had been amended by Republic Act No. 9257, otherwise known as the "Expanded Senior Citizens Act". The last paragraph of Section 4, states:

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[24] An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes.
[25] G.R. No. 159647, April 15, 2005.

"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." *(Emphasis supplied)*

Since it was R.A. No. 7432 that was in force at the time petitioner granted the 20% sales discount, R.A. No. 7432 will govern the result of this case.

In order to prove that it granted the 20% sales discounts to qualified senior citizens, petitioner presented its Summary of Sales for 2004[26], Summary of Sales Discount granted to senior citizens[27], Cash Slips evidencing the purchases of medicines by senior citizens for the year 2004[28], sample of BIR and BFAD Special Record Books for sales discounts granted to senior citizens in 2004[29], sample form 153 or Daily Cash, Accounting Receivable and Sales Report filed by its MDC-Bangued Partelo branch[30], Cashier's Report filed by its MDC-Bangued Partelo branch[31], and Daily Summary of Sales to Senior Citizens[32] all dated January 1, 2004.

In the Report[33] of the Independent CPA, the total sales discount given to senior citizens for the period covering January 1, 2004 to March 20, 2004 are summarized as follows:

Branch	Amount Per Book	Amount Per Audit	Variance
Baguio Session	P 1,238,240.63	P 1,222,392.66	P 15,847.97
Baguio Magsaysay	183,210.16	182,101.13	1,109.03
Bangued Partelo	221,183.48	279,654.13	(58,470.65)
Batac Washington	402,651.63	403,527.79	(876.16)

[26] Exhibit "V".
[27] Exhibits "W" and "W-1".
[28] Exhibit "CC" (including sub-markings).
[29] Exhibit "DD" (including sub-markings).
[30] Exhibit "Y".
[31] Exhibits "Y-1" and "Y-2".
[32] Exhibits "Y-3" and "Y-4".
[33] Exhibit "EE".

Candon Nat'l Highway	346,115.80	266,817.88	79,297.92
Baguio Centermall	277,020.21	252,472.22	24,547.99
San Fernando LU Quezon	607,305.93	555,653.51	51,652.42
La Trinidad	197,265.27	193,258.82	4,006.45
Tayug Quezon	276,902.53	223,713.39	53,189.14
Mangaldan Rizal	143,209.97	145,478.97	(2,269.00)
Dagupan Perez Blvd.	343,360.65	492,955.73	(149,595.08)
San Fernando LU Rizal	296,961.89	298,492.06	(1,530.17)
Calasiao Public Market	113,403.52	99,149.26	14,254.26
Baguio Abanao	388,279.91	389,380.96	(1,101.05)
TOTAL	**P 5,035,111.58**	**P 5,005,048.51**	**P 30,063.07**

After a thorough examination of the various cash slips, in relation to petitioner's Summary of Sales and Discounts to Senior Citizens and the Special Record books for 2004, the Court finds the Report of the Independent CPA to be in order.

It can be noted however that in the following branches of Baguio Session, Baguio Magsaysay, Candon National Highway, Baguio Centermall, San Fernando LU Quezon, La Trinidad, Tayug Quezon, and Calasiao Public Market, the amounts per book exceeded that of the amounts per audit; while in branches of Bangued Portello, Batac Washington, Mangaldan Rizal, Dagupan Perez Blvd., San Fernando LU Rizal, and Baguio Abanao the amounts per audit are higher than that of the amounts per book.

In cases wherein the amounts per book exceeded that of the amounts per audit, the latter will be the basis for the determination of sales discount as it was the amount duly substantiated. On the other hand, in cases wherein the amounts per book are lower than that of the amounts per audit, the former shall be adopted considering that this Court may not grant a claim beyond what is prayed for in petitioner's Petition for Review.

Based on the foregoing guideline, the Court arrived at the amount of P4,791,206.40, detailed as follows:

Branch	Amount Per Book	Amount Per Audit	Should be Basis of Refundable Amount
Baguio Session	P 1,238,240.63	P 1,222,392.66	P 1,222,392.66
Baguio Magsaysay	183,210.16	182,101.13	182,101.13
Bangued Partelo	221,183.48	279,654.13	221,183.48
Batac Washington	402,651.63	403,527.79	402,651.63
Candon National Highway	346,115.80	266,817.88	266,817.88
Baguio Centermall	277,020.21	252,472.22	252,472.22
San Fernando LU Quezon	607,305.93	555,653.51	555,653.51
La Trinidad	197,265.27	193,258.82	193,258.82
Tayug Quezon	276,902.53	223,713.39	223,713.39
Mangaldan Rizal	143,209.97	145,478.97	143,209.97
Dagupan Perez Blvd.	343,360.65	492,955.73	343,360.65
San Fernando LU Rizal	296,961.89	298,492.06	296,961.89
Calasiao Public Market	113,403.52	99,149.26	99,149.26
Baguio Abanao	388,279.91	389,380.96	388,279.91
Total	**P 5,035,111.58**	**P 5,005,048.51**	**P 4,791,206.40**

However, the substantiated 20% sales discount in the amount of P4,791,206.40 is still inclusive of the ten percent (10%) value-added tax (VAT). It is but proper to remove the 10% VAT or the amount of P435,564.22; hence, only the resulting amount of P4,355,642.18 may be claimed as tax credit.

Likewise, petitioner must establish that related gross sales to senior citizens, inclusive of the 20% sales discount, were declared as part of its taxable income to validly claim the amount of P4,355,642.18 as tax credit.

For taxable year 2004, petitioner reported as sales in its Annual Income Tax Return the amount of P729,802,164.00[34], which was also reflected in its Audited Financial Statements[35] for the same taxable year. An examination of petitioner's General Ledger Book[36], as well as Cash Receipts and Sales Book[37] for 2004 proves that the sales amount of P729,802,164.00 included the gross sales to senior citizens, relative to the 20% sales discount in the amount of P4,355,642.18.

[34] Exhibit "C", line 14C.
[35] Exhibit "D".
[36] Exhibit "Z".
[37] Exhibit "AA".

Nevertheless, the Court notes that petitioner had an income tax liability for taxable year 2004 in the amount of P311,931.00[38]; and petitioner further failed to substantiate its prior year's excess credits of P39,068,836.21.[39] Thus, the resulting 20% sales discount of P4,355,642.18 shall be partially applied against the income tax due of P311,931.00, computed as follows:

Sales/Revenues/Receipts/Fees	P 729,802,164.00
Less: Cost of Sales/Services	717,736,330.00
Gross Income from Operation	P 12,065,834.00
Add: Non-Operating & Other Income	3,530,711.00
Total Gross Income	P 15,596,545.00
Less: Deductions	28,502,133.00
Taxable Income	P (12,905,588.00)
Minimum Corporate Income Tax (MCIT)	P 311,931.00
Less: Tax Credits	
20% Sales Discounts granted	
to Senior Citizens	4,355,642.18
Excess Tax Credits	**(P4,043,711.18)**

In sum, petitioner's unused tax credits arising from the 20% sales discounts it granted to senior citizens for taxable year 2004 amounted only to P4,043,711.18.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of P4,043,711.18 in favor of petitioner, representing the 20% sales discount it granted to senior citizens for taxable year 2004.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[38] Exhibit "C", line 26.
[39] Exhibit "C", line 27A.

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