REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BICOLANDIA DRUG CORPORATION (formerly known as ELMAS DRUG CORPORATION),
Petitioner,

- versus -

C.T.A. CASE NO. 5768

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 12 2001

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DECISION

This case involves a claim for refund/tax credit in the amount of P401,964.00 for the taxable year 1996 arising from the alleged erroneous treatment of the 20% sales discounts granted to qualified senior citizens on their purchases of medicines as a deduction from gross income as prescribed by Revenue Regulations No. 2-94 instead of as tax credit as provided for in Republic Act No. 7432, otherwise known as the Senior Citizens Act.

The facts as simplified by the parties in their Joint Stipulation of Facts (see pages 45 to 46, CTA records).

1. Petitioner Bicolandia Drug Corporation is a domestic corporation organized and existing under the laws of the Philippines with principal office address at Panganiban St., corner Peñafrancia, Naga City.

2. In 1996, it operated four (4) drug stores located at Iriga City; Abella, Naga City; Panganiban, Naga City and Panotes, Daet as franchisees under the business name and style of "Mercury Drug".

3. Petitioner is duly licensed to operate drug stores 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.

4. Petitioner filed on April 15, 1997, is Annual Income Tax Return for tax year 1996.

5. The Annual Income Tax Return was filed by Petitioner under protest.

6. On January 16, 1998, Petitioner filed with Respondent a claim for tax credit/refund for tax year 1996 in the amount of FOUR HUNDRED ONE THOUSAND NINE HUNDRED SIXTY FOUR PESOS (P401,964.00) arising from the twenty percent sales discount granted by Petitioner to qualified senior citizens in compliance with Republic Act No. 7432.

7. To date, Respondent has not granted Petitioner's claim for tax credit and has not acted upon the same until this date.

8. The Petitioner's claim was filed within the two (2) year statutory period within which to file a judicial claim for tax refund.

Petitioner alleges that on various dates during the period from January to December 1996, it granted 20% sales discounts to qualified senior citizens on their purchases of medicines in compliance with Republic Act No. 7432 and its Implementing Rules and Regulations, which discounts amounted to P618,406.00. By the mandate of Section 2(I) of Revenue Regulations No. 2-94, Petitioner then claimed said amount as deduction from its gross income for the taxable year 1996.

Petitioner now asserts that Section 4(a) of R.A. No. 7432 was wrongfully implemented by Section 2(I) of said regulation considering that the law clearly provides that "the cost of 20% sales discounts to senior citizens may be claimed as tax credit" and not a mere deduction from gross income. Thus, a refund/tax credit is in order, computed as follows:

Net Sales		P 107,556,499.00
Add: 20% Sales Discount to Senior Citizens		618,406.00
Gross Sales		P 108,174,905.00
Less: Cost of Sales		
Merchandise inventory, beginning	P 11,620,255.00	
Purchases	109,454,698.00	
Total merchandise available for sale	P 121,074,953.00	
Less: Merchandise inventory, end	22,823,882.00	98,251,071.00
Gross Profit		P 9,923,834.00
Add: Miscellaneous Income		123,985.00
Total Income		P 10,047,819.00
Less: Operating Expenses		9,342,474.00
Net Income before Income Tax		P 705,345.00
Less: Income subjected to final tax		81,386.00
Net Taxable Income		P 623,959.00
Income Tax Due		P 218,386.00
Less: 1.) Tax Credit	P 618,406.00	
2.) Income Tax Actually Paid	1,944.00	620,350.00
Income Tax Refundable		P 401,964.00

Petitioner presented documentary and testimonial evidence to support its claim. Respondent, on the other hand, submitted the case based on the pleadings without any intention of filing a memorandum (CTA rec., p. 194).

The issues submitted for resolution are:

1. Whether or not 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. No. 7432 or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94.

2. Whether or not Petitioner actually granted a total amount of SIX HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED SIX PESOS (P618,406.00) sales discounts to senior citizens on their purchases of medicines in the year 1996; and

3. Whether or not Petitioner is entitled to a tax credit/refund in the amount of FOUR HUNDRED ONE THOUSAND NINE HUNDRED SIXTY FOUR PESOS (P401,964.00).

Anent to the first issue, We already ruled in several cases that the 20% sales discounts granted to senior citizens should be treated as a tax credit and not as a mere deduction from gross income **(Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367, February 13, 1998; Baliuag Drug Corporation vs. CIR, CTA Case No. 5365, dated May 13, 1998; and Trinity Franchising and Management Corporation vs. CIR, CTA Case No. 5313, dated August 18, 1998).**

For easy comprehension, the particular provisions of the law and regulation relied upon by the parties are hereunder reproduced:

Republic Act No. 7432

"**Sec. 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".

Section 2(i) of Revenue Regulations No. 2-94

"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 sales for value-added tax and other percentage tax purposes." (Underscoring supplied)

In the case of **Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357, April 6, 1998,** we further elucidated, viz:

"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.

To be valid, an administrative regulation must not be in contravention but should conform to the standards that the law prescribes. (Tayug Rural Bank vs. Central Bank, 146 SCRA 120). 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.

Black's Law Dictionary, 6th ed., defines tax credit in this wise:

> An amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability. A tax credit reduces the taxpayer's liability dollar for dollar, compared to a deduction which reduces taxable income upon which the tax liability is calculated. <u>A credit differs from deduction to the extent that the former is subtracted from the tax while the latter is subtracted from income before the tax is computed</u>. (Underscoring supplied)

Under RR No. 2-94, respondent has interpreted tax credit as synonymous to tax deduction in glaring contradiction to the above definition. Undoubtedly, there is a clear distinction, nay, difference between the two terms.

Under these circumstances, the law should reign supreme over subordinate rules and regulations where the provisions of the latter are not in accord with the former. It is clearly provided in Section 4(a) of RA 7432 that the cost of the 20% discount granted by private establishments may be claimed by the latter as tax credit and not as a deduction contrary to what has been declared in Revenue Regulations No. 2-94. In case of conflict between a statute and an administrative order, the former must prevail. (Kilusang Mayo Uno vs. Garcia, Jr., 239 SCRA 386) Furthermore, the legal issue in this petition has already been settled in the case entitled Sto. Rosario Drug vs. Commissioner of Internal Revenue, CTA Case No. 5367, dated February 16, 1998.

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 deductions 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."

Furthermore, the Court of Appeals affirmed the said ruling but held that the amount to be deducted as tax credit should be the direct cost or cost of sales of the 20% discount and not the full amount of the discount **(Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946, October 19, 1999).**

Having settled the legal issue, We now proceed to the factual issues.

Based on the evidence on record, Petitioner was able to substantiate only the amount of P612,291.96 out of the 1996 total claimed 20% discounts of P618,406.00 (Exhs. O, N and sub-markings).

Finally, in order to determine the issue of whether or not Petitioner is entitled to the claim sought, it is necessary that Petitioner prove the following:

1. that it actually deducted the claimed amount of 20% sales discounts from its gross sales (income) in computing its income tax due for 1996;
2. that it actually paid the corresponding amount of income tax due for 1996 as a result of the deduction of the claimed 20% sales discounts to senior citizens from its gross sales (income); and
3. that the claimed amount of 20% sales discounts to senior citizens is duly supported by cash slips or by copies of official receipts.

Petitioner was able to establish the fact that it actually deducted the amount of P577,521.50 representing 20% sales discounts to senior citizens from its 1996 gross sales of P108,135,442.82 resulting to a net sales of P107,556,499.11 for all of its four branches, detailed as follows:

			Deductions		
Branch	Exhibits	Gross Sales	20% Disc. to Senior Citizens	Others	Net Sales
Panotes, Daet	E to E-2-a	P 33,087,985.08	P 168,682.32	P 199.81	P 32,919,102.95
Panganiban, Naga	F to F-2-a	30,252,467.56	201,229.82	1,222.41	30,050,015.33
Abella, Naga City	G to G-2-a	26,212,482.77	174,612.52		26,037,870.25
Iriga City	H to H-2-a	18,582,507.42	32,996.84		18,549,510.58
	Total:	P108,135,442.83	P 577,521.50	P1,422.22	P107,556,499.11

The above 1996 net sales amount of P107,556,499.00 is reflected in Petitioner's audited financial statements and 1996 annual income tax return as "SALES, net" (Exh. I-1-a) and "GROSS SALES DURING THE YEAR (Exh. J-3), respectivly. Hence, out of the 1996 claimed amount of sales discounts of P618,406.00, only the amount of P577,521.50 was actually deducted from Petitioner's gross sales (income) in computing its 1996 income tax liability of P1,944.00 (Exh. J). And Petitioner paid the said income tax liability out of its total tax credits of P104,971.00 (Exh. J).

It is worth reiterating that Petitioner was able to substantiate the amount of P612,291.96 as 20% sales discounts granted to senior citizens. However, this amount is inclusive of VAT, therefore, it is but proper to exclude the 10% VAT or the amount of P55,662.91. Accordingly, only the amount of P556,629.05 shall be the basis for computing Petitioner's allowable tax credit.

In other words, in computing Petitioner's 1996 overpaid income tax, the total 20% sales discounts granted to senior citizens in the amount of P577,521.50 previously deducted by Petitioner from its gross sales shall be added back to its net sales of

P107,556,499.00. The reason being that the 20% sales discount is no longer treated as a deduction from gross income but rather as a tax credit. Nevertheless, only the direct cost of the 20% sales discounts shall be allowed as tax credit and not the entire amount of the 20% sales discounts.

In sum, only the direct cost of the substantiated amount of 20% sales discounts of P556,629.05 shall be allowed as tax credit which is P505,755.73, computed below:

Net Sales	P 107,556,499.00
Add: 20% Sales Discounts to Senior Citizens	577,521.50
Gross Sales	P 108,134,020.50
Cost of Sales	P 98,251,071.00
Divided by Gross Sales	P 108,134,020.50
Percentage of Cost of Sales to Gross Sales	90.860462%
Multiply by amount of 20% Sales Discounts to Senior Citizens for 1996 duly substantiated by cash slips	P 556,629.05
Allowable Tax Credit	P 505,755.73

Consequently, a re-computation of Petitioner's 1996 income tax liability using the above figure of P505,755.73 as allowable tax credit will result to an overpaid income tax of P303,623.66, as follows:

Net Sales		P 107,556,499.00
Add: 20% Sales Discount to Senior Citizens		577,521.50
Gross Sales		P 108,134,020.50
Less: Cost of Sales		
Merchandise inventory, beginning	P 11,620,255.00	
Purchases	109,454,698.00	
Total merchandise available for sale	P121,074,953.00	
Less: Merchandise inventory, end	22,823,882.00	98,251,071.00
Gross Profit		P 9,882,949.50
Add: Miscellaneous Income		123,985.00
Total Income		P 10,006,934.50

Less: Operating Expenses				9,342,474.00
Net Income before Income Tax			P	664,460.50
Less: Income subjected to final tax				81,386.00
Net Taxable Income			P	583,074.50
Income Tax Due			P	204,076.08
Less: Tax Credits				
1.) Cost of 20% Sales Discounts to Senior Citizens		P 505,755.73		
2.) Total Tax Credits per 1996 ITR	P 104,971.00			
Less: Tax Credits to be applied to next year	103,027.00	1,944.00		507,699.73
Income Tax Refundable			P	(303,623.66)

WHEREFORE, in view of all the foregoing, Petitioner's claim for refund/tax credit is hereby **GRANTED** but in a reduced amount of P303,623.66. Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of herein Petitioner in the amount of P303,623.66 representing 1996 overpaid income tax for the year 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

CONCURRING:

RAMON O. DE VEYRA
Associate Judge

DISSENTING:

AMANCIO Q. SAGA
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