REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

SOUTHERN LUZON DRUG CORPORATION,	**C.T.A. CASE NO. 7449**
Petitioner,	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE,	**Promulgated:**
Respondent.	MAR 2 4 2009 9:05 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

This case involves *Republic Act No. (RA) 7432*, otherwise known as *An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and Other Purposes*, passed on April 23, 1992. It granted, among others, a 20% sales discount on purchases of medicines by qualified senior citizens.

THE CASE

This is a Petition for Review filed on April 17, 2006 by Southern Luzon Drug Corporation (hereafter "petitioner") praying for the issuance of a tax credit certificate in the amount of P10,773,413.63, representing

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the twenty percent (20%) sales discounts granted to qualified senior citizens on their purchases of medicines during the taxable year 2003, as provided for in *RA 7432*.

THE PARTIES

Petitioner Southern Luzon Drug Corporation 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.

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.

THE FACTS

The facts, as culled from the records of the case, are as follows:

In 2003, petitioner operated eleven (11) drug stores located in San Pablo Ultimart; Batangas Caedo, Bauan Kapitan Ponso; Lopes GV Vera; Nasugbu JP Laurel; Puerto Princesa Malvar; Pinamalayan Mabini; Palawan Valencia; Palawan Rizal; Robinson's Place Lipa and Lucena Red V.

Petitioner is duly licensed to operate drug stores by the 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.

During the period from January to December 2003, petitioner allegedly granted twenty percent (20%) sales discounts to qualified senior citizens on their purchases of medicines, in compliance with *RA 7432* and its Implementing Rules and Regulations.

On April 29, 2004, petitioner filed its Annual Income Tax Return for taxable year 2003 and treated its senior citizens discounts as prepaid tax credit.

On April 12, 2006, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of P10,773,413.63, equivalent to the twenty percent (20%) sales discount granted by the petitioner to qualified senior citizens during the year 2003, in compliance with *RA 7432*.

Due to the inaction of the respondent and in order to toll the running of the two-year prescriptive period in filing a claim for refund, petitioner filed the instant Petition for Review on April 17, 2006.

In his Answer, respondent alleged the following special and affirmative defenses:

> "4. The claim for refund is still under examination by the Respondent Bureau of Internal Revenue;
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> 5. The burden of proof is upon the Petitioner to prove that it is entitled to the claim for refund;
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> 6. 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;
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> 7. 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:
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>> "(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 similar 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 from their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes."
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> 8. 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;

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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, August 2, 1991)***;

10. In Statutory Construction, in cases of ambiguities, the principle that the contemporaneous construction of statute given by the 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, 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)***."

Petitioner presented Cyre M. Clores, Nolito A. Diola and Nunilon Tagle, as witnesses, and documentary evidence, marked as Exhibits "A" to "BB", inclusive of their submarkings, which were all admitted by the Court.

On the other hand, for the repeated failure of the counsel for respondent to appear despite due notice at the scheduled initial presentation of evidence for the respondent, upon motion of counsel for petitioner, respondent was deemed to have waived his right to present evidence and to have rested his case. Petitioner was granted thirty (30) days from May 26, 2008 to file its memorandum, while respondent was granted twenty (20) days from notice to file his memorandum. Considering that only petitioner filed its "Memorandum" on June 24, 2008, the case was deemed submitted for decision on June 24, 2008.

Hence, this decision.

ISSUES

As stipulated by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND OR TAX CREDIT IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

II

WHETHER OR NOT THE SALES DISCOUNT GRANTED BY THE PETITIONER TO SENIOR CITIZENS ON THEIR PURCHASES OF MEDICINE SHOULD BE TREATED AS TAX CREDIT OR MERELY AS A DEDUCTION FROM GROSS INCOME.

III

WHETHER OR NOT PETITIONER ACTUALLY GRANTED AND IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN A TOTAL AMOUNT OF P10,773,413.63 SALES REPRESENTING THE DISCOUNTS IT GRANTED TO SENIOR CITIZENS ON THEIR PURCHASES OF MEDICINES IN THE YEAR 2003.

Principal Issue

The foregoing issues raised by the parties boil down to the principal issue of whether or not petitioner is entitled to a tax credit certificate in the amount of P10,773,413.63, representing the cost of twenty percent (20%) sales discounts given to qualified senior citizens for the taxable year ending December 31, 2003.

THE COURT'S RULING

The petition is partly meritorious.

Section 4 (a) of *RA 7432* provides:

> "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 establishment, restaurants and recreation centers and purchases of medicines anywhere in the country: Provided, that private establishments may claim the cost as tax credit;"

Pursuant to the aforequoted provision, *RA 7432* grants to senior citizens the privilege of obtaining a twenty percent (20%) discount on their purchases of medicines from any private establishment in the country *(Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, 456 SCRA 414)*, and the latter may then claim the cost of the discount as a tax credit to be deducted from its tax liabilities *(Bicolandia Drug Corporation*

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[Formerly Elmas Drug Corporation] vs. Commissioner of Internal Revenue, 492 SCRA 159).

Petitioner's contention

Petitioner contends that it is entitled to a tax credit in the total amount of P10,773,413.63 for taxable year 2003, representing the twenty percent (20%) sales discounts granted to qualified senior citizens pursuant to *RA 7432* and its Implementing Regulations.

In support of its claim, petitioner presented the following documentary evidence: Summary of Petitioner's Sales for *2003 (Exhibits "Q" to "Q-1")*; Summary of the Amount of Sales Discount Granted to Senior Citizens for 2003 *(Exhibits "R" to "R-1")*; cash slips evidencing the purchases of medicines by senior citizens for 2003 *(Exhibit "U");* Sample BIR and BFAD Special Record Books for 2003 *(Exhibit "V");* Sample Form 153 or Daily Cash, Accounting Receivable, and Sales Report of petitioner filed by its MDC-San Pablo Ultimart branch on January 1, 2003 *(Exhibit "Y");* Cashier's Report filed by petitioner's MDC-San Pablo Ultimart branch on January 1, 2003 *(Exhibits "Y-1" to "Y-2")*; Daily Sales of Senior Citizens on January 1, 2003 *(Exhibit "Y-3")*; and Z Totalizer of all MDC-San Pablo Ultimart branch, cash register machine on January 1, 2003 *(Exhibits "Y-4" to "Y-7")*.

In his final report dated February 8, 2007 (*Exhibit "W"*), the Court Commissioned Independent CPA, Mr. Nunilon P. Tagle, certified that the amount of P10,586,390.10 represents the 20% sales discounts granted by petitioner to qualified senior citizens for the year 2003, broken down as follows:

Branch	Amount per book	Amount Per Audit	Variance
Ultimart San Pablo	2,350,233.80	2,346,455.63	3,778.17
Caedo Batangas	3,790,565.92	3,176,166.73	614,399.19
Bauan Batangas	2,377,146.64	1,915,367.81	461,778.83
Lopez GV Vera	502,005.31	496,019.87	5,985.44
Nasugbu Batangas	791,976.67	787,187.03	4,789.64
Puerto Princesa Malvar	249,653.36	249,063.63	589.73
Pinamalayan	719,183.71	711,767.33	7,416.34
Puerto Princesa Valencia	726,198.71	722,014.64	4,184.07
Puerto Princesa Rizal	195,389.00	182,347.43	13,041.57
Robinson Place Lipa	109,824.40	0	109,824.40
Lucena Red V	9,634.48	0	9,634.48
TOTAL	**11,821,811.96**	**10,586,390.10**	**1,235,421.86**

After comparing the amount of the 20% privilege discounts granted to senior citizens per petitioner's Special Record Books or as claimed by petitioner, and as audited by the independent CPA, the Court finds that the amount per Special Record Books exceeded the audited amounts.

Therefore, only the audited amount of P10,586,390.10 will be considered as basis for computing petitioner's refundable amount, as this amount is the one that has been duly substantiated.

Also, the Court notes that the substantiated amount of P10,586,390.10 is inclusive of value –added tax (VAT). The said amount shall be further reduced by deducting therefrom the 10% VAT or the amount of P962,399.10. Hence, only the remaining amount of P9,623,991.00 may be claimed as tax credit by petitioner.

However, in order to validly claim the amount of P9,623,991.00, as tax credit, petitioner must also establish that the related gross sales to senior citizens (inclusive of 20% discount privilege) were declared as part of its taxable income.

Record shows that petitioner presented its Annual Income Tax Return for taxable year 2003 and reported as sales the amount of P327,241,289.00 *(Exhibit "C")*, which was likewise reflected in its Audited Financial Statements for the same taxable year *(Exhibit "D")*. A perusal of of petitioner's General Ledger *(Exhibit "Z")* and Cash Receipts and Sales Book *(Exhibit "AA")* shows that the sales in the amount of P327,241,289.00 included the gross sales to senior citizens relative to the claimed 20% sales discounts of P9,623,991.00. Therefore, the gross sales to senior citizens pertaining to the claimed 20% sales discounts of P9,623,991.00 formed part of petitioner's taxable income for taxable year 2003.

Since petitioner had an income tax liability for 2003 in the amount of P612,599.00, as reflected in its Annual Income Tax Return *(Exhibit "C")*, and failed to substantiate its prior years excess credits in the amount of P14,947,202.00, the claimed 20% sales discounts of P9,623,991.00 shall be partially applied against the income tax due of P612,599.00. Thus, the unused tax credits arising from the 20% sales discounts granted by petitioner to senior citizens for taxable year 2003 amounted only to P9,011,392.00, computed as follows:

Gross Income	P30,629,942.00
Less: Deductions	32,074,979.00
Taxable Income	(P1,445,037.00)
Minimum Corporate Income Tax (MCIT) Due	P 612,599.00
Less: Tax Credits 20% Sales Discounts granted to senior citizens	P9,623,991.00
Excess Tax Credits	**P9,011,392.00**

It ought to be noted, however, that on February 26, 2004, *RA 9257*, or *The Expanded Senior Citizens Act of 2003*, amending *RA 7432*, was signed into law and took effect on March 21, 2004, providing that starting taxable year 2004, the 20% sales discount granted by establishments to qualified senior citizens is to be treated as tax

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deduction, no longer as tax credit *(M.E. Holding Corporation vs. The Hon. Court of Appeals, 547 SCRA 389)*.

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE** a Tax Credit Certificate in favor of petitioner in the amount of **NINE MILLION ELEVEN THOUSAND THREE HUNDRED NINETY TWO PESOS (P9,011,392.00)**, representing the unused tax credits arising from the twenty percent (20%) sales discounts granted to qualified senior citizens on their purchases of medicines for the period covering taxable year 2003, pursuant to *RA 7432*.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice