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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CENTRAL LUZON DRUG CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5767

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 12 2001

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DECISION

This is a judicial claim for refund filed by the Petitioner on April 7, 1999, seeking for a refund in the amount of P904,769.00 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 tax credit as provided for in Republic Act No. 7432 (Senior Citizens Act).

The antecedent facts of this case may be summarized as follows:

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines. It is operating primarily as a retailer of medicines and other pharmaceutical products.

In 1996, it operated six (6) drugstores located in Balanga, Bataan; Mabalacat, Pampanga; Camiling, Tarlac; Arayat, Pampanga; Maharlika, Cabanatuan and Apalit in Pampanga as franchisee under the business name and style of "Mercury Drug".

Petitioner alleged that on various dates, during the period from January to December 1996, it granted twenty percent (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.

For the period from January to December 1996, the amount allegedly representing the 20% sales discounts granted by Petitioner to qualified senior citizens under the said Republic Act totaled P904,769.00.

On April 15, 1997, Petitioner filed its Annual Income Tax Return for taxable year 1996 declaring therein that it incurred net losses from its operations.

On January 16, 1998, Petitioner filed with the Respondent a tax refund/credit of the amount of P904,769.00 allegedly arising from the 20% sales discounts granted by the Petitioner to qualified senior citizens in compliance with Republic Act No. 7432 (Exhibit I).

Unable to obtain any affirmative response from the Respondent, Petitioner elevated this case before this Court on April 7, 1999.

In its Answer filed on May 18, 1999, Respondent advanced the following Special and Affirmative Defenses, to wit:

> "5. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary investigation/examination by Respondent's Bureau;

6. Petitioner failed miserably to show that the total amount of P904,769.00, claimed as tax credit, were erroneously or illegally collected, or that the same are properly documented;

7. Taxes paid and collected are presumed to have been made in accordance with law; hence, not refundable;

8. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

9. It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code;

10. Well-established is the rule that claims for refund/tax credit are construed in strictissimi juris against the taxpayer as it partakes the nature of exemption from tax.

On September 22, 2000, this case was considered submitted for decision sans the memorandum of the Respondent.

The issues to be resolved in this case boil down to the following:

a) Whether or not the 20% sales discount granted to qualified senior citizens on their purchases of medicine should be treated as tax credit pursuant to Section 4 of Republic Act No. 7432 or as deduction from gross income according to Section 2(i) of Revenue Regulations No. 2-94; and

b) Whether or not Petitioner, on the basis of the evidence presented, is entitled to the refund sought.

For the proper disposition of the first issue, the alleged conflicting provisions of law are hereunder reproduced:

I. Section 4 of 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".

II. 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)

As regards the first issue, this Court rules in the affirmative.

In the recent case of **Mercury Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5315, dated September 6, 2000,** this Court has already reconciled the alleged conflict between the two aforesaid provisions and We ruled that the 20% sales discounts should be treated as tax credit and not as a mere deduction from gross income, thus:

"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)

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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."

(also in Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946, dated October 19, 1999; Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367, dated February 16, 1998; Del Rosarion Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357, dated April 6, 1998; Baliuag Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5365, dated May 13, 1998; and Trinity Franchising & Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5313, dated August 18, 1998)

On all fours with the aforesaid cases, We see no cogent reason at this point to disturb the said ruling.

Proceeding now to the second issue, the evidence at hand reveals that Petitioner was at a net loss position (page 4, Petition for Review, Exhibits F, F-1 to F-2) during taxable year 1996, accordingly, the claim for tax credit must fail.

This is in keeping with the decision of this Court in the case of **Southern Luzon Drug Corporation (formerly known as Laguna Drug Corporation) vs. Commissioner of Internal Revenue, CTA Case No. 5583, promulgated on April 24, 2000,** where We emphatically ruled, thus:

> "It must be borne in mind that both tax refund and tax credit are modes of recovering taxes which are either erroneously or illegally paid to the government. Tax refund takes place when there is actually a reimbursement of the tax. In tax credit, the government applies the amount determined to be reimbursable after proper verification against any sum that may be due and collectible from the taxpayer. (Law of Basic Taxation in the Philippines, Aban, 1st Ed., p. 208). Accordingly, if no tax has been paid to the government, erroneously or illegally, or if no amount is due and collectible from the taxpayer, tax refund or tax credit is unavailing. Moreover, whether the recovery of the tax is made by means of a claim for refund or tax credit, before recovery is allowed it must be first established that there was an actual collection and receipt by the government of the tax sought to be recovered. This requires factual proof (Collector vs. William Li Yao, Dec. 28, 1963). The taxpayer who paid the tax can file a claim for refund or credit where there is an overpayment of the tax (Law of Federal Income Taxation, Mertens, 1995 Ed., Vol. 15, Chap. 58, p. 2). In the case at bar, it is undisputed that petitioner did not pay any tax by virtue of its net loss position in 1995."
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> **(also in Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5582, dated April 24, 2000; and Cagayan Valley Drug Corporation [formerly known as Vas Salus Drug Corporation] vs. Commissioner of Internal Revenue, CTA Case No. 5581, dated April 26, 2000)**

Prescinding from the above, it could logically be deduced that tax credit is premised on the existence of tax liability on the part of taxpayer. In other words, if there is no tax liability, tax credit is not available.

WHEREFORE, in view of all the foregoing, the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

CONCURRING:

AMANCIO Q. SAGA
Associate Judge

DISSENTING:

ERNESTO D. ACOSTA
Presiding 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