REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DEL ROSARIO DRUG CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5357

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 06 1998

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DECISION

The pivotal issues at bar center on the correct interpretation of the language of Section 4 of Republic Act No. 7432, otherwise known as the Senior Citizens Act, specifically on the treatment of the 20% sales discount on purchase of medicines afforded to senior citizens and the validity of Revenue Regulations (RR) No. 2-94 insofar as it conforms to the provision of said law. In particular, this Court is called upon to determine whether such sales discount should be deductible from gross sales for value-added tax or other percentage tax purposes as prescribed under RR No. 2-94 and Bureau of Internal Revenue (BIR) Ruling No. 67-95; or as contended by herein petitioner, deemed plainly as a tax credit available against taxes due on the petitioner.

The facts are simple.

Petitioner is a duly licensed retailer of pharmaceutical products by the Bureau of Food and Drugs, the City Government of Legaspi, and other government

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agencies. As such, it operates a drug store in Legaspi City under the name and business style of "Mercury Drug".

For the two-year period covering January, 1993 to December 1994, petitioner granted 20% sales discount to qualified senior citizens on their purchase of medicines and accordingly deducted from its declared gross income such sales discounts in the aggregate sum of ₱6,015.54 for the year 1993 and ₱255,127.55 for the year 1994 pursuant to the aforestated law and its implementing rules and regulations.

Asseverating on the alleged wrong interpretation made by the respondent on the treatment of sales discounts as a deduction from gross income (should be gross sales) which it believes should have been available as tax credit, petitioner filed the following claims for refund with the respondent, to wit:

Year	Date Filed	Amount Claimed (65% of Sales Discounts[1])
1993	June 29, 1995	P 3,910.10
1994	August 10, 1995	165,832.90

As it turned out, however, petitioner elected to file its twin claims before this Court and not to await anymore the decision of the respondent in view of the

[1] Income tax benefit of *tax credit* (100%) less income tax benefit of *tax deduction* (35%) equals differential (65%)

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near expiry of the prescriptive period of two years within which it may seasonably institute a judicial claim for refund. Hence, this appeal.

Petitioner argues that a tax credit is a deduction from income tax; that inasmuch as Section 4 of Republic Act No. 7432 provides in clear and unequivocal language that the discounts granted to senior citizens may be claimed as tax credit by the private establishments granting the same, Section 2 (i) of RR No. 2-94 which is a mere administrative regulation, cannot modify or alter the clear mandate of said law; that consequently, Section 2 (i) of RR No. 2-94 is void and without force and effect for being inconsistent with the statute it seeks to implement.

Respondent, on the other hand, gives the following general and oft-repeated lines of special and affirmative defenses, to wit:

> 11. In an action for tax refund/credit, the burden is upon the taxpayer to show and/or prove entitlement thereto and failure to sustain said burden is fatal to said action;
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> 12. A claim for tax refund/credit is construed strictly against the claimant since it partakes of the nature of an exemption from taxation (Coll. of Int. Rev. vs. Ledesma, G.R. No. L-17508, 31 SCRA 95, Jan. 30, 1970);
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> 13. Taxes paid and collected are deemed to have been made in accordance with law and existing BIR regulations;

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14. This Honorable Court has no jurisdiction to take cognizance of the case for petitioner's failure to comply with the provisions of Section 204 in relation to Section 230 of the Tax Code, as amended

After a painstaking scrutiny of the attending facts, the issues involved, the respective argumentation of the parties and the applicable jurisprudence, laws and regulations in point, this Court hereby rules in favor of the petitioner.

For easy reference, the pertinent provisions of law and regulations in question are hereby reproduced, to wit:

A) 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. x x x" (underscoring supplied)

B) Section 2 (i) of RR 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,

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> 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." (underscoring supplied)

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

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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 are administrative order, the

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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.

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What is thus left for Us to do is to examine the documentary proofs of the petitioner whether they are sufficient to establish its claim for refund. In its formal offer of evidence, petitioner adduced the following exhibits, to wit:

> 1. Exhibit "A" Photocopy of the summary of 20% discounts granted to qualified senior citizens in 1993 consisting of thirteen (13) pages
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> 2. Exhibit "B" Photocopy of the special ledger books used in 1994 for recording data regarding granting of 20% discounts to qualified senior citizens, consisting of one hundred thirty-nine (139) pages
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> 3. Exhibit "C" inclusive-Photocopy of petitioner's letter dated April 18, 1994, addressed to the Regional Director, Bureau of Internal Revenue, Revenue Region No. V, Legazpi City.
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> 4. Exhibit "D" inclusive-Photocopy of petitioner's letter dated July 25, 1995, addressed to Atty. Liwayway Vinzons-Chato, Commissioner, Bureau of Internal Revenue, Quezon City, consisting of three (3) pages and its inclosures
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> 5. Exhibit "E" inclusive-Photocopy of petitioner's letter dated March 27, 1995, addressed to Atty. Liwayway Vinzons-Chato, Commissioner, Bureau of Internal Revenue, Quezon City, consisting of three (3) pages and its inclosures.

It must be noted that petitioner failed to submit the originals or even photocopies of the sales invoices or receipts evidencing the discounts given to senior

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citizens. We find this prejudicial. Be that as it may, We observe, however, that in her comment to said formal offer of evidence, respondent did not present any objection to the admission and collective purpose of the above enumerated Exhibits "A" and "B". These exhibits show the date of granting of the 20% discount, the identification numbers and names of the senior citizens granted such discount, their addresses, items bought and the corresponding amount of discount. In view of this, We are constrained to grant petitioner's claim for refund on the basis of such admission by the respondent. A close verification of the entries in said exhibits reveals that the sum of the discounts granted by the petitioner to qualified senior citizens correspond with the amount of herein claim for refund.

Prescinding from the above, this Court finds the contention of the respondent that petitioner has not complied with the requirements of Section 230 of the Tax Code to be without merit. Petitioner has appropriately filed a written claim for refund with the respondent on its administrative claim for the years 1993 and 1994 and correspondingly initiated herein petition within the reglementary period of two years from the date of payment of the tax alleged to have been erroneously paid.

A careful scrutiny of the evidence offered by the petitioner shows that it is entitled to the refund, but only in the total amount of P150,811.34, detailed hereunder as follows:

For 1993:

Net Sales			₱33,320,672.40
Add: 20% Discount to Senior Citizens			6,015.54
Gross Sales			₱33,326,687.94
Less: Cost of Sales			
Merchandise inventory, beg.		₱ 2,604,726.45	
Add Purchases	₱31,040,237.35		
Less: Purchase Discounts	226,541.51		
Purchase Returns & Allow.	646,688.88	30,167,006.96	
Total Goods Available for Sales		₱32,771,733.41	
Less: Merchandise inventory, end		1,319,209.11	31,452,524.30
Gross income			₱ 1,874,163.64
Less: Operating Expenses			1,817,213.81
Net Operating Income			₱ 56,949.83
Add: Miscellaneous Income			16,290.86
Net Taxable Income			₱ 73,240.69
Tax Due [73,240.69 x 35%]			₱ 25,634.24
Less: 1) Tax Credit (Cost of 20% Discount)			
[(31,452,524.30 ÷ 33,326,87.94) x 6,015.54]		₱ 5,677.25	
2) Income Tax Payment for the Year			

Qtr.	Date	Bank Code/ ROR No.	Amount		
2nd	08-20-93	003022	₱ 1,320.28		
3rd	11-17-93	Traders Royal	4,659.72		
Annual	04-14-94	UBP	17,548.80	23,528.80	29,206.05
AMOUNT REFUNDABLE					₱ 3,571.81

For 1994:

Net Sales	₱33,028,322.00
Add: 20% Discount to Senior Citizens	255,127.55
Gross Sales	₱33,283,449.55
Less: Cost of Sales	

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Merchandise inventory, beg.		P 1,319,209.11	
Add Purchases	P32,692,027.03		
Less: Purchase Discounts	210,682.91		
Purchase Returns & Allow.	696,100.43	31,785,243.69	
Total Goods Available for Sales		P33,104,452.80	
Less: Merchandise inventory, end		2,246,659.12	30,857,793.68
Gross income			P 2,425,655.87
Less: Operating Expenses			2,120,177.73
Net Operating Income			P 305,478.14
Add: Miscellaneous Income			25,432.86
Net Taxable Income			P 330,911.00

Tax Due [330,911.00 x 35%]						P 115,818.85
Less: 1) Tax Credit (Cost of 20% Discount)						
[(30,857,793.68 ÷ 33,283,449.55) x 255,127.55]					P 236,534.18	
2) Income Tax Payment for the Year						
Qtr.	Date	Bank Code/ ROR No.		Amount		
2nd	08-29-94	Union Bank		P 1,060.93		
3rd	11-29-94	Union Bank		7,109.78		
Annual	04-17-95	Union Bank		18,353.49	26,524.20	263,058.38
AMOUNT REFUNDABLE						P 147,239.53

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, Revenue Regulations No. 2-94 of the respondent is declared null and void insofar as it treats the 20% discount given by private establishments as a deduction from gross sales. Respondent is **ORDERED to ISSUE a TAX CREDIT CERTIFICATE** in the total amount of **P150,811.34** in favor of the petitioner. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals

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