REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CAGAYAN VALLEY DRUG CORPORATION (formerly known as VAS SALUS DRUG CORPORATION),
Petitioner,

- versus -

C.T.A. CASE NO. 5581

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 26 2000

x - x

DECISION

The legal issues which are presented for our consideration are whether or not the cost of the 20% discount granted by the Petitioner pursuant to Republic Act No. 7432 (a.k.a. Senior Citizens Law) to qualified senior citizens on their medicine purchases be treated as a deduction from the annual tax due (tax Credit), as claimed by the Petitioner, or as a deduction from gross income (sales), as claimed by herein Respondent and whether or not Petitioner who suffered losses during the taxable year 1995 is entitled to a tax refund/credit of the cost of the 20% discount it gave to senior citizens pursuant to RA 7432.

Petitioner is a corporation organized and existing under the laws of the Philippines. It is a retailer of medicine and other pharmaceutical products, and operates two drug stores, one in Tuguegarao, Cagayan and the other in Roxas, Isabela, under the business name and style of "Mercury Drug" and is duly licensed by the Bureau of Foods and Drugs, the Bureau of Internal Revenue and the local government units where the stores are located.

For the year 1995, Petitioner granted to qualified senior citizens, 20% discount on their medicine purchases pursuant to Republic Act 7432 and its implementing Rules and Regulations. Petitioner alleges that the total amount of P123,083.00 representing the sales discounts was not utilized by Petitioner for the year 1995 as it suffered losses from its operation for the said period.

Petitioner pointed out that the total cost of discount it granted to senior citizens should be deducted from its taxes due (tax credit) for the year in question as provided for by RA 7432 and should not be considered as a mere deduction from its gross income/sales, as stated in Section 2(i) of Revenue Regulations 2-94, thus, it argued that since it suffered losses for the year 1995 and therefore has not benefited from the treatment of sales discounts, either as a deduction from gross income/sales nor as a deduction from its income tax due, it is entitled to TAX CREDIT in the full amount of the sales discount.

Thus, on December 27, 1996 Petitioner filed with the Respondent a claim for tax refund/credit of the full amount of the sales discounts it granted to senior citizens for 1995 totalling P123,083.00 (Exh. J).

The claim was not acted upon by Respondent, hence on March 18, 1998, Petitioner filed with this Court the instant Petition for Review.

Petitioner repleads its stance a *quo* in the present petition. On the other hand, Respondent failed to file his Answer to the instant petition, hence Respondent was declared by this Court **IN DEFAULT** in an Order dated August 14, 1998.

As earlier adverted to at the onset, the issues which are presented for our consideration are whether or not the cost of 20% discount granted by Petitioner to qualified senior citizens of the Republic on their medicine purchases be treated as a deduction from the annual tax due (tax credit), as claimed by the Petitioner or as deduction from gross income/sales, as claimed by Respondent, and whether or not Petitioner who suffered losses during the taxable year 1995 is entitled to a tax refund/credit of the cost of the 20% discount it gave to senior citizens pursuant to RA 7432.

For a better understanding of the issues, we quote hereunder Section 4(a) of RA 7432 and Sec. 2(i) of Revenue Regulations No.2-94, to wit:

> ***"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 establishments, restaurants and recreation centers and purchase of medicine anywhere in the country; Provided, That private establishments may claim the cost as tax credit." (underscoring supplied)
>
> Section 2(i), Revenue Regulation No. 2-94:
>
> 1. 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 or other percentage tax purposes." (Underscoring supplied)

This is not the first time that this Court has been confronted with the first issue at hand. We have already resolved the same issue ***in Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367 promulgated on February 16, 1998***, and ***Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357. promulgated on April 6, 1998***, anchored on factual circumstances on all fours with the instant petition. In the latter case, this Court ruled and we quote:

> "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.
>
> xxx xxx xxx
>
> 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.

We do not think any different conclusion ought to be reached in the case at bar. Settled is the rule that the first and fundamental duty of the Court is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them. This Court cannot deem itself authorized to depart from the plain meaning of the statute so explicit in terms and so searching in extent. Thus, the cost of the 20% discount given to senior citizens should be treated as a deduction from annual income tax (tax credit).

With regard to the second issue, the same must be answered in the negative.

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 claim for refund or tax credit, before recovery is allowed it must be established first 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.

Furthermore, Section 204(3) of the Tax Code, as amended, in relation to Section 230, presupposes payment of tax, to wit:

> **SEC. 204(3)** – x x x. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.
>
> **SEC. 230.** ***Recovery of tax erroneously or illegally collected.*** **– x x x**
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment. (Emphases supplied.)

We would also like to stress at this point that the Republic Act No. 7432 only provides that the 20% sales discount granted to senior citizens may be claimed as tax credit. It does not contain any proviso that a refund may be claimed as an alternative thereto. In fact, the legislators intended that there would be no cash out, thus, a tax credit. We quote the pertinent portion during the deliberations by the Bicameral Conference Committee on Social Justice on February 5, 1992:

> SEN. ANGARA. ...in the case of private hospitals... they got the grant of 15% discount, provided that, the private hospitals can claim the expense as a tax credit.
>
> REP. AQUINO. Yah... could be allowed as deductions in the perpetrations of...(inaudible) income...
>
> SEN. ANGARA. I-tax credit na lang natin para walang cash out ano?
>
> REP. AQUINO. Oo tax credit. Tama, Okay. Hospitals ba o lahat ng establishments na covered?
>
> THE CHAIRMAN. (Rep. Unico). Sa kuwan lang 'yon, as private hospitals lang.
>
> REP. AQUINO. Ano ba 'yung establishments na covered?
>
> SEN. ANGARA. Restaurants, lodging houses, recreation centers.
>
> REP. AQUINO. All establishments covered siguro?
>
> SEN. ANGARA. From all establishments. Alisin na natin 'yung kuwan kung ganon. Can we go back to Section 4 ha?
>
> REP. AQUINO. Oho.
>
> SEN. ANGARA. Letter A. To capture that thought, we'll say the grant of 20% discount from all establishments et cetera, et cetera, provided that said establishments - provided that private establishments may claim the cost as a tax credit. Ganon ba 'yon?
>
> REP. AQUINO. Yah.

IN THE LIGHT OF ALL THE FOREGOING, the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

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

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DISSENTING OPINION

The majority opinion denied the instant claim for refund/tax credit on the ground that Petitioner having suffered a net loss in 1995 is not entitled to a refund on the principle that no tax having been paid to the government, no tax refund or credit is due.

The majority opinion goes on to conclude that a tax refund is premised on the actual collection and receipt by the government of the tax sought to be recovered, hence no taxes having been paid to the government, no refund is possible.

In adhering to the aforestated principle, my esteemed colleagues seemed to have failed to see the forest for the trees. Truly, the 1995 Tax Code under Section 230 provides for the remedy of refund in cases only of erroneous or illegal collection of taxes, however the majority failed to see that this is only the rule for this specific cause of action. There are still other cases where no actual payment of taxes is made but a tax credit may be granted as where a special law specifically grants a tax credit as a form of incentive or reimbursement such as discounts given by drug companies to senior citizens. Republic Act No. 7432 better known as the "Senior Citizens Act" virtually orders drug companies to grant a twenty (20%) discount to senior citizens on their purchase of medicines. In return for the benefits granted by these drug companies with the consequent loss of revenue for said discounts, the government affords them the privilege to claim the cost of the 20% discount as tax credit. This was thoroughly discussed in the body of the decision.

The majority opinion cited the Law of Federal Income Taxation as declaring that "a taxpayer who paid the tax can file a claim for refund or credit when there is an overpayment of the tax". Precisely, this statement refers to a refund when there is overpayment of taxes, it cannot apply generally to all kinds of refund or tax credit like what is contemplated by Republic Act No. 7432. In the same vein, Sections 204(3) and 230 of the Tax Code also cited by the majority, cannot be used as the legal bases for denying the claim for refund because these two provisions envision only the general rule for refund, that is, whenever there is an excess or erroneous payment of the tax.

I disagree with the sweeping statement made by the majority that "if there is no tax liability then tax credit is not available". I believe that there is no legal basis for such a statement. Section 4(a) of Republic Act No. 7432 explicitly provides that private establishments which grant the 20% discount may claim the cost as tax credit. Said law does not require prior tax payments as a condition for claiming these discounts as tax credit. A similar situation exists under the Investment Incentives Act, a special law where tax credits are granted even when there are no prior tax payments made such as tax credit granted covering purchases of domestic capital equipment, and domestic breeding stocks and genetic materials.

The State, in its goal of providing social justice in all phases of national development, channels the benefits through these drug companies by ordering them to grant the 20% discount with the view of reimbursing them because it is still the State who is the sole benefactor and not the private drug companies.

To impose a condition that taxes must first be paid before there can be a refund is to lose sight of the essence and purpose of Republic Act 7432. This particular law uses the method of refund or tax credit in the context of reimbursement and not on the basis of erroneous or illegal collection of taxes. Aptly put, if the drug stores granting the 20% discounts to senior citizens suffers a net loss during a taxable year, then they should still be allowed to claim the discounts given as tax credit to be applied to their future tax liabilities. This is what Republic Act 7432 provides and this is what should be done in the instant case. It may even be possible that the loss position suffered by the petitioner may be partly due to the discounts it granted to senior citizens. In granting the drug companies the benefit of tax credits, the State, in effect, provides them with a viable exchange for the burdens imposed upon them by this law. As a court of law, our decision should merely apply the provisions of Republic Act No. 7432 and not impose conditions where the law itself provides none.

WHEREFORE, in view of the foregoing, I vote to grant the claim for refund in the amount of P110,664.56 based on the evidence presented by the Petitioner.

ERNESTO D. ACOSTA
Presiding Judge