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. 5599

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 10 2000

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate of alleged overpaid income tax in the amount of P259,659.00 for the calendar year ended December 31, 1995. The alleged overpayment arose from Petitioner's interpretation that the 20% sales discount granted to senior citizens under Republic Act (R.A.) 7432 should be treated as tax credit instead of a deduction from gross income as declared by the Respondent in Revenue Regulations No. 2-94.

The facts of the case are simple.

Petitioner is a corporation duly organized and existing under the laws of the Philippines (Exhs. I, J and R). It is engaged in the business of retailing pharmaceutical products under the business style of "MERCURY DRUG" (Exhs. A, A-1 to A-8, B, B-1 to B-8, C and C-1). It is duly licensed by the Bureau of Food and Drugs to operate a drugstore with proper permits and licenses from the local government unit of the City of Naga and other government agencies (Exhs. K, L, P Q and R).

For the year 1995, Petitioner granted 20% sales discounts to qualified senior citizens on their purchases of medicines pursuant to R.A. 7432, otherwise known as "An Act To Maximize The Contribution Of Senior Citizens To Nation Building, Grant Benefits And Special Privileges And For Other Purposes". Petitioner treated these discounts as a deduction from its gross income in compliance with Revenue Regulations No. 2-94 which implemented the aforesaid law.

On April 15, 1996, Petitioner filed its 1995 Corporation Annual Income Tax Return declaring a net loss position with a nil income tax liability. This final adjustment return treated the sales discounts granted to qualified senior citizens as a mere deduction instead of as a tax credit (Exhs. F, and F-1 to F-4).

On December 27, 1996, Petitioner filed a letter claim for tax refund or credit with the Appellate Division of the Bureau of Internal Revenue.(Exh. O). The request for tax refund or credit with reference to the alleged overpaid income tax arose from Petitioner's contention that Respondent erred in treating the 20% sales discounts given to senior citizens on their purchases of medicines as a deduction from its gross income for income tax purposes or other percentage tax purposes rather than as a tax credit.

On April 6, 1998, Petitioner lodged its appeal with this Court in order to toll the running of the two-year prescriptive period to file a claim for refund pursuant to Section 230 of the Tax Code, as amended. In its Petition for Review, Petitioner contends that Section 4 of R.A. 7432 provides in clear and unequivocal language that discounts granted to senior citizens may be claimed as TAX CREDIT. It further avers positively that Section 2(i) of Revenue Regulations No. 2-94 which is a mere administrative regulation, cannot modify or alter the clear mandate of said law. Petitioner believes that Section 2(i) of Revenue Regulations No. 2-94 is illegal, void and without effect for being inconsistent with the statute it seeks to implement.

Respondent, on the other hand, maintain the same argument in his Answer that Revenue Regulations No. 2-94 is valid considering that Republic Act No. 7432 has mandated that the Department of Finance, among others, have the corresponding authority to issue necessary rules and regulations to carry out the objectives of the Act.

Thus, the issues to be resolved by this Court are as follows:

1. The proper interpretation of Section 4(a) of Republic Act No. 7432, insofar as the treatment of the 20% sales discount granted to qualified senior citizens on their purchases of medicines;

2. The validity of Revenue Regulations No. 2-94, implementing the aforesaid law, which treats the 20% sales discounts as a deduction from gross income for income tax purposes and from gross sales for value-added tax or other percentage tax purposes; and

3. Whether or not Petitioner was able to prove with substantial evidence its claim for refund.

We find all the legal issues in favor of Petitioner. In fact, We have already ruled on these similar issues in previous decisions enumerated hereunder, to wit:

1. **Tropical Hut Food Market, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5312, May 28, 1999;**

2. **Elmas Drug Corporation vs. Commissioner of Internal Revenue, CTA Case NO. 5311, August 27, 1998;**

3. **Trinity Franchising & Management Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 5313, August 18, 1998;**

4. **M.E. Holding Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5314, August 17, 1998;**

5. **Baliuag Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5365, May 13, 1998;**

6. **Del Rosario Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357, April 6, 1998;**

7. **Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367, February 16, 1998**

In the aforementioned cases, this Court disposed of the legal issue in this wise:

"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.

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.

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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(1) 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 (Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5357, dated April 6, 1998, supra)."

The aforecited ruling has been affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946, dated October 19, 1999**. Pertinent portions of the said decision are quoted hereunder:

"(W)here the law is very clear, there is no room for interpretation. Section 4 of Republic Act 7432 clearly provides that the cost of the 20% discount may be claimed by Respondent as tax credit and there is nothing more to interpret.

The Court of Tax Appeals, in its decision dated August 27, 1998 correctly ruled that the *direct cost or the cost of sales of the 20% discount given to senior citizens is deductible as* ***tax credit***." (Underlining supplied).

Having settled the legal issue involved in the case at bar, We are now tasked to resolve the factual issue of whether or not Petitioner is entitled to the claim for refund of overpaid income tax for the year 1995 based on the evidence submitted.

It is apparent from the records of the case that the present claim for refund was seasonably filed within the reglementary period of two years from the date of payment of the tax pursuant to Section 230 of the Tax Code, as amended. The letter claim for refund was filed with the Respondent on December 26, 1996, and the Petition for Review was filed on April 7, 1998. The two-year period commences to run on April 15, 1996, the time when Petitioner filed its 1995 final adjustment return (**Commissioner of Internal Revenue vs. TMX Sales, Inc. et al., G.R. No. 837736, dated January 15, 1992**).

In order to prove that it granted the 20% sales discounts to qualified senior citizens, Petitioner presented, among others, the various pre-marked cash slips which were previously examined by the commissioned independent certified public accountant.

A meticulous scrutiny of the evidence on record, together with the certification issued by the independent accountant, reveal the following:

1. Not all the cash slips supporting the Summary of Sales and Discounts to Senior Citizens were presented;

2. Some of the cash slips offered in evidence were not admitted by the Court in its Resolution, dated June 10, 1999; and

3. Some of the cash slips were twice entered or not properly computed.

These aforementioned observations by the Court will have the effect of reducing Petitioner's claimed 20% sales discount to P256,871.22, detailed as follows:

Summary Page No.	Summation of Summary Per Page	Substantiated By Evidence	Disallowances Made by the Court	R E M A R K S
1	P 1,899.91	P 1,899.91	P -	
2	2,579.49	2,510.89	68.60	Exh. U-2084 not admitted
3	1,937.95	1,937.95	-	
4	2,198.21	2,198.21	-	
5	2,313.61	2,313.61	-	
6	1,590.04	1,541.50	48.54	Exhs. U-2292 and 908 twice entered
7	1,942.99	1,942.43	0.56	Exh. U-950 overstated
8	2,320.43	2,320.43	-	
9	2,101.31	2,101.31	-	
10	2,086.91	2,086.91	-	
11	2,148.92	2,148.92	-	
12	2,233.38	2,233.38	-	
13	2,397.35	2,397.35	-	
14	2,142.08	2,142.08	-	
15	2,341.72	2,341.72	-	
16	2,609.65	2,573.07	36.58	Exh. U-2714 not admitted
17	2,340.18	2,340.18	-	
18	2,155.75	2,155.75	-	
19	2,379.86	2,244.13	135.73	Exhs. U-2858 and U-2878 not admitted
20	2,210.49	2,210.49	-	
21	2,355.26	2,315.50	39.76	Exh. U-3029 not admitted
22	2,013.04	2,013.04	-	
23	2,271.14	2,271.14	-	
24	2,418.46	2,418.46	-	
25	2,355.29	2,355.29	-	
26	2,178.00	2,134.10	43.90	Exh. U-3225 not admitted
27	2,709.92	2,709.92	-	
28	2,413.30	2,413.30	-	
29	2,509.00	2,509.00	-	
30	2,258.17	2,258.17	-	
31	2,568.07	2,568.07	-	
32	2,440.24	2,440.24	-	
33	2,590.21	2,590.21	-	
34	2,683.87	2,683.87	-	
35	2,701.68	2,679.31	22.37	Exh. U-3225 not admitted
36	2,966.46	2,966.46	-	
37	3,113.12	3,113.12	-	
38	2,743.78	2,743.78	-	
39	2,761.82	2,761.82	-	
40	2,654.49	2,654.49	-	
41	2,708.55	2,708.55	-	
42	2,213.89	2,213.79	0.10	Exh. U-4016 overstated
43	2,819.42	2,819.42	-	
44	2,144.06	2,144.06	-	
45	667.03	667.03	-	

46	2,897.89	2,805.89	92.00	Exhs. U-269139 and U-269141 overstated
47	2,566.57	2,411.30	155.27	Exhs. U-269190 and U-270009 twice entered; net overstatement in Exhs. U-269194 & U-270004
48	4,174.10	4,106.67	67.43	Exh. U-270051 not admitted and U-271201 not offered
49	2,491.00	2,373.74	117.26	Exh. U-271433 & U-271643 not offered; and Exh. 271258 not admitted
50	2,370.16	1,955.31	414.85	Exhs. U-271301 to U-371309 not offered
51	2,860.17	2,837.71	22.46	Exh. U271310 not offered
52	1,951.77	1,835.76	116.01	Exh. U-272801 not admitted
53	2,106.30	2,080.54	25.76	Exh. U-272817 twice entered
54	1,770.60	1,718.77	51.83	Exh. U-272856 twice entered
55	1,742.34	1,692.52	49.82	Exhs. U273425 & U-273439 not admitted
56	1,452.03	1,415.07	36.96	Exh. U-273488 not admitted
57	1,956.07	1,644.04	312.03	Exhs. U476468 to U-476476 not offered; Exh. U-273966 twice entered
58	1,521.92	1,481.81	40.11	Exh. U-274000 not offered
59	1,342.29	1,308.44	33.85	Exh. U-274125 not admitted
60	1,331.58	1,331.58	-	
61	1,700.31	1,676.96	23.35	Exh. U-274843 twice entered
62	1,686.97	157.45	1,529.52	Exhs. U-276801 to U-276854 not admitted
63	1,836.86	-	1,836.86	Exhs. U-276855 to U-276900 not admitted
64	1,389.33	-	1,389.33	Exhs. U-276312 to U-276327, and Exhs. U-277325 to U-277363 not admitted
65	1,597.96	398.36	1,199.60	Exhs. U-277365 to U-277400 not admitted
66	1,533.39	1,407.74	125.65	Exh. U-278633 twice entered and Exhs. U-278610, U-278624 and U-278640 not admitted
67	2,083.65	2,083.65	-	
68	1,488.23	1,462.23	26.00	Exh. U-279334 twice entered
69	579.48	579.48	-	
70	1,687.51	1,687.51	-	
71	1,546.75	1,527.26	19.49	Exh. U-280057 not admitted
72	2,010.03	1,991.83	18.20	Exh. U-280835 not admitted
73	1,639.23	1,639.23	-	
74	2,160.74	2,160.74	-	
75	2,369.24	2,336.55	32.69	Exh. U-281801 not admitted
76	2,331.03	2,331.03	-	
77	2,164.70	1,850.79	313.91	Exhs. U-282251 to U-282259 not admitted
78	2,613.64	462.41	2,151.23	Exhs. U-282260 to U-282300 not admitted
79	2,320.94	2,320.94	-	
80	3,058.43	2,985.51	72.92	Exhs. U-282735 and U-282739 twice entered
81	3,255.99	2,963.97	292.02	Exhs. U-282761, U-282762, U-282765 and U-282766 entered twice
82	2,798.87	1,021.28	1,777.59	Exhs. U-282767 to U-282789 twice entered; and Exh. U-282900 not offered
83	2,909.57	2,909.57	-	
84	2,231.00	2,231.00	-	
85	3,207.61	2,107.47	1,100.14	Exhs. U-283551 to U-283568 not offered
86	2,694.77	1,850.05	844.72	Exhs. U-283569 to U-283577, U-283801 to

				U-283803 not admitted; & U-283918 twice entered
87	2,601.90	2,180.30	421.60	Exhs. U-283951 to U-283960 not offered
88	2,341.52	2,341.52	-	
89	2,280.40	2,280.40	-	
90	2,814.53	2,786.97	27.56	Exh. U-284446 not aditted; and Exh. U-284603 overstated
91	2,845.08	2,315.84	529.24	Exhs. U-284617 to U-284621, U-284634, U-284755, U-284771 and U-284772 twice entered
92	2,429.96	2,388.59	41.37	Exh. U-284902 twice entered
93	2,431.84	2,366.04	65.80	Exh. U-285151 not admitted
94	2,697.79	2,697.79	-	
95	2,970.50	2,970.50	-	
96	3,179.91	3,060.76	119.15	Exh. U-285524 not admitted
97	2,325.78	2,325.78	-	
98	2,506.84	2,506.84	-	
99	3,121.32	3,090.85	30.47	Exh. U-286227 & U-286228 not offered; and U-286264 twice entered
100	2,652.19	2,652.19	-	
101	2,658.61	2,658.61	-	
102	2,861.46	2,479.15	382.31	Exhs. U-287002 & U-287028 not admitted; and U-287009 & U-287025 twice entered
103	2,471.28	2,342.41	128.87	Exhs. U-287048 & U-287049 not admitted; and U-287055 not offered
104	2,373.87	2,239.60	134.27	Exhs. U-287242 & U-287532 twice entered; and U-287520 not admitted
105	2,985.41	2,852.65	132.76	Exh. U-287515 not admitted; and U-287833 not offered
106	2,892.04	2,818.54	73.50	Exhs. U-288751 & U-288752 not offered
107	3,238.59	2,865.51	373.08	Exhs. U-288001, U-288189, U-288190, U-288220, U-288221, U-288229 not offered; and U-288282 not admitted
108	3,140.85	2,993.92	146.93	Exh. U0288229 not offered; and U-288518 twice entered
109	2,731.75	2,715.69	16.06	Exh. U-288729 twice entered & U-28831 not offered
110	2,912.15	2,805.95	106.20	Exh. U-289001 not offered; & U-289059 overstated
111	3,242.20	3,051.05	191.15	Exh. U-289247 twice entered; and U-26316 not offered
112	3,020.10	2,738.55	281.55	Exhs. U-289547, U-289549 & U-289550 not admitted; U-289551 not offered
113	2,457.81	2,442.81	15.00	Exh. U-289954 not admitted
114	2,623.45	2,502.42	121.03	Exh. U-289969 not admitted
115	2,947.99	2,947.99	-	
116	2,655.21	2,189.30	465.91	Exhs. U-290451 to U-290462 not offered
117	447.43	328.18	119.25	Exhs. U-290463 & U-290464 not offered
Total	P 275,479.28	P 256,871.22	P 18,608.06	

Hence, Petitioner is only entitled to a lesser amount of P236,321.52, computed as follows:

Net Sales		P44,369,801.00
Add: 20% Discount to Senior Citizens (Per Petitioner's Summary)		275,479.28
Gross Sales		P44,645,280.28
Less: Cost of Sales		
Merchandise Inventory, beg.	P 5,036,117.00	
Add Purchases	47,694,148.00	
Total Goods Available for Sales	P52,730,265.00	
Less: Merchandise Inventory, End	11,620,255.00	41,110,010.00
Gross Income		P 3,535,270.28
Less: Operating Expenses		4,424,747.00
Net Operating Loss		P 889,476.72
Add: Miscellaneous Income		75,124.00
Net Loss		P 814,352.72

Tax Due	P -
Less: 1) Tax Credit – Cost of 20% Discounts with supporting documents [(P41,110,010/P44,645,280.28) x P256,871.22]	P 236,321.52
2) Income Tax Payment for the Year	99,920.91
Total	P 336,242.43
Less: Amount to be applied as credit to next year	99,920.91
Amount Refundable	P 236,321.52

WHEREFORE, in view of the foregoing, Petitioner's claim for refund is hereby partially **GRANTED.** Respondent is hereby **ORDERED** to **REFUND** in favor of Petitioner the amount of P236,321.52, representing overpaid income tax for the year 1995.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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