REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

M. E. HOLDING CORPORATION,
Petitioner

- versus -

C.T.A. CASE NO. 5314

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: AUG 17 1998

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DECISION

The legal issue which is presented for our consideration is whether or not **the cost of 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 the herein respondent.

Petitioner is a corporation organized and existing under the laws of the Philippines. It is a retailer of pharmaceutical products and operates two drug stores in Baguio City under the name and business style of "Mercury Drug", and is duly licensed by the Bureau of Food and

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Drugs, the Bureau of Internal Revenue and the local government unit where the stores are located.

For the years 1993 and 1994, petitioner granted to qualified senior citizens a 20% discount on their medicine purchases, pursuant to Republic Act 7432 and its Implementing Rules and Regulations, totalling ₱150,695.00 for 1993 and ₱515,782.00 for 1994. The said amounts (sales discounts) were treated by petitioner as a deduction from its gross income/sales for the said years. As such, petitioner paid to respondent the amounts of ₱3,559,730.00 and ₱4,008,790.00 as its taxes due for the years 1993 and 1994, respectively.

Petitioner pointed out that the total cost of discounts it granted to senior citizens should be **deducted from its taxes due** as tax credit for the years in question as provided for by RA 7432, and should not be considered as **mere deduction from its gross income/sales** as it did in said years; thus, it stressed, there was an overpayment of income taxes for the said period. Accordingly, on June 26, 1995 and December 20, 1995, petitioner filed with the respondent claims for refund of the excess corporate income taxes paid for the years 1993 & 1994 in the amounts of ₱97,952.00 and ₱335,258.00, respectively.

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Both claims were not acted upon by respondent, hence, on December 29, 1995, petitioner filed with this Court the instant petition for review.

Petitioner repleads its stance a quo in the instant petition for review. On the other hand, respondent failed to file her answer to the instant petition, hence, in Our Resolution of March 21, 1996, respondent was declared IN DEFAULT.

As earlier adverted to, the issue which is presented for our consideration is whether the cost of 20% discount granted by petitioner to qualified senior citizens on their medicine purchases, pursuant to Section 4(a) of RA No. 7432, should be considered as tax credit or deductions from gross income. The law and revenue regulation in question pronounce, thus:

> "**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)

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Section 2(i), Revenue Regulation 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 or other percentage tax purposes." (underscoring supplied)

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

> "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

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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.

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

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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.

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 be 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."

We cannot think of other reasons and conclusion to resolve 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 is not, therefore, inclined to depart or arrive at a different

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interpretation from the plain and unambiguous meaning of the statute cited. Thus, the cost of the 20% discount given to senior citizens should be treated as a tax credit from the annual income tax due.

With regard to the factual issues, records clearly show that petitioner has sufficiently adduced evidence to prove its claim and that the claim for refund was seasonably filed within the reglementary period of two (2) years from the date of payment of the tax pursuant to Sec. 230 of the Tax Code. Thus, the Court has no other recourse but to grant the claimed refund, reduced however, by the amount which corresponds to the exhibits which were previously denied, computed as follows:

For 1993:

Net Sales		₱ 86,324,022.00
Add: 20% Discount to Senior Citizens		150,695.00
Gross Sales		₱ 86,474,717.00
Less: Cost of Sales		
Merchandise inventory, beg.	₱ 9,310,227.00	
Add Purchases	78,178,862.00	
Total Goods Available for Sales	₱ 87,489,089.00	
Less: Merchandise inventory, end	8,714,137.00	78,774,952.00
Gross income		₱ 7,699,765.00
Less: Operating Expenses		12,512,230.00
Net Operating Loss		₱ 4,812,465.00
Add: Miscellaneous Income		129,813,871.00
Total Income		₱125,001,406.00
Less: Income Subjected To Final Withholding Tax		
1. Dividend	₱105,428,462.00	
2. Interest	9,251,593.00	114,680,055.00
Net Taxable Income		₱ 10,321,351.00

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Tax Due [10,321,351.00 x 35%]		₱ 3,612,473.00
Less: 1) Tax Credit (Cost of 20% Discount)		
[(78,774,952.00 ÷ 86,474,717.00) x 149,442.86]	₱ 136,136.37	
2) Income Tax Payment for the Year	3,559,730.00	3,695,866.37
AMOUNT REFUNDABLE		₱ 83,393.37

For 1994:

Net Sales		₱ 84,095,523.00
Add: 20% Discount to Senior Citizens		515,782.00
Gross Sales		₱ 84,611,305.00
Less: Cost of Sales		
Merchandise inventory, beg.	₱ 8,714,137.00	
Add Purchases	77,160,092.00	
Total Goods Available for Sales	₱85,874,229.00	
Less: Merchandise inventory, end	9,519,210.00	76,355,019.00
Gross income		₱ 8,256,286.00
Less: Operating Expenses		14,825,832.00
Net Operating Loss		₱ 6,569,546.00
Add: Miscellaneous Income		135,158,821.00
Total Income		₱128,589,275.00
Less: Income Subjected To Final Withholding Tax		
1. Dividend	₱113,273,063.00	
2. Interest	3,346,743.00	116,619,806.00
Net Taxable Income		₱ 11,969,469.00
Tax Due [11,969,469.00 x 35%]		₱ 4,189,314.00
Less: 1) Tax Credit (Cost of 20% Discount)		
[(76,355,019.00 ÷ 84,611,305.00) x 515,019.23]	₱ 464,764.17	
2) Income Tax Payment for the Year	4,008,790.00	4,473,554.17
AMOUNT REFUNDABLE		₱ 284,240.17

IN THE LIGHT OF ALL THE FOREGOING, respondent is hereby **ORDERED** to **GRANT** a **REFUND** or issue a **TAX CREDIT CERTIFICATE** to herein petitioner in the total amount of ₱367,633.54, representing the latter's overpaid income tax payments for the years 1993 and 1994. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

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
Court of Tax Appeals

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