REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CAGAYAN VALLEY DRUG CORPORATION,
Petitioner,

C.T.A. EB No. 329
(C.T.A. Case No. 7209)

Present:

-versus-

Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.:*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: AUG 07 2008 GMApolinario 1:05 p.m.

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DECISION

CASTAÑEDA, JR., J.:

THE CASE

This is a petition for review under Section 11 of Republic Act ("R.A.") 9282[1], as amended, assailing the Decision dated August 10, 2007 and the

[1]AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS(CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL

Resolution dated October 18, 2007 issued by the Court in Division effectively denying Cagayan Valley Drug Corporation's claimed tax credit in the amount of Three Million Eighteen Thousand Eleven Pesos and 66/100 (P3,018,011.66) representing the 20% sales discount granted to senior citizens on their purchase of medicines for the taxable year 2002, in CTA Case No. 7209.

THE FACTS

Cagayan Valley Drug Corporation ("petitioner"), a corporation duly organized and existing under the laws of the Republic of the Philippines is engaged in the pharmaceutical business[2]; while the Commissioner of Internal Revenue ("respondent") is tasked to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes under the 1997 National Internal Revenue Code ("NIRC"), as amended.

On April 15, 2003, the petitioner filed its annual income tax return ("ITR") declaring as tax credits the 20% senior citizen discounts of

JURISDICTION AND ENLARGING ITS MEMEBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES which took effect on April 23, 2004.

[2] Records of CTA Case No. 7209, p. 55

P2,161,962.00 and P856,050.00, or the cumulative amount of P3,018,011.66 for the four quarters of 2002.[3]

On April 13, 2005, the petitioner requested the Bureau of Internal Revenue ("BIR") to issue a tax credit certificate for its unused tax credits of P3,018,011.66 for the taxable year 2002 under R.A. 7432.[4]

On April 14, 2005, the petitioner filed a petition for review docketed as CTA Case No. 7209 before the Court in Division to toll the running of the two year prescriptive period in claiming the amount of its unutilized tax credits.[5]

In ruling for the respondent, the Court in Division issued a Decision dated August 10, 2007 denying petitioner's prayer for the issuance of a tax credit certificate in the amount of P 3,018,011.66 for taxable year 2002[6], and reasoned that:

> **WHEREFORE**, premises considered, the instant petition is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**[7]

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[3] Indicated as creditable tax withheld. See Lines 26C and 26D, Part II of the 2002 annual ITR marked as Exhibit C.
[4] Records of CTA Case No. 7209, p. 55.
[5] Records of CTA Case No. 7209, p. 1
[6] Rollo, pp. 15-25.
[7] Penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista. See Rollo, p. 25.

Dissatisfied, petitioner moved to reconsider the assailed Decision. However, the Court in Division denied the same for lack of merit, and affirmed the assailed Decision in the Resolution dated October 18, 2007, the dispositive portion reads:[8]

> **IN VIEW OF THE FOREGOING,** petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[9]

THE ISSUE

Petitioner appealed to the Court *en banc* by way of a petition for review ascribing the sole error allegedly committed by the Court in Division:

> The main question, thence, in the present case is whether or not the Petition should be dismissed for the alleged failure of Petitioner to show that its gross sales to senior citizens were declared as part of its taxable income.[10]

Petitioner contends that its gross sales of P238,763,285.70 are substantiated by cash slips, books of account, annual ITR and audited financial statement. Finance Manager Romeo David testified that petitioner's sales are summarized in the schedule of sales and reflected in

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[8] Rollo, pp. 31-32.
[9] Rollo, p. 32.
[10] Rollo, p. 11.

its annual ITR. The schedule of sales shows the amount of sales per branch and the total sales for the taxable year of 2002. Total sales should be construed to include all types of sales such as regular sales, discounted sales, bulk sales, small sales, sale by piece and the other sales.

The testimony of Mr. David was never questioned during cross examination, nor was the allegation if the senior citizen sales discount transactions formed part of its gross sales ever raised as an issue.

Respondent counters that the Court in Division correctly ruled that petitioner failed to prove that the sales subject to tax credits are not specifically identified or at least segregated from the sales made to non-senior citizen transactions. The law requires that these sales must be declared as income in the tax returns for a tax refund to prosper. Petitioner failed to specifically identify which part of the reported "total sales" the sales discount to senior citizens are included.

COURT'S RULING

The petition is devoid of merit.

The instant case pertaining to taxable year 2002 is covered by Republic Act ("R.A.") 7432[11] which took effect on May 14, 1992. R.A. No. 7432 allowed pharmaceutical businesses to claim as tax credit the senior

[11] "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes" which took effect on May 14, 1992.

citizen sales discounts availed to by qualified senior citizens under Section 4 of R.A. 7432, stating:

> 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 the 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

A tax credit is generally defined as a peso-for-peso reduction from a taxpayer's tax liability. It is a direct subtraction from the tax payable to the government.[12]

Congress later enacted R.A. 9257[13] amending R.A. 7432. Effective March 21, 2004, R.A. 9257 treats senior citizen discounts granted by pharmaceutical establishments to qualified senior citizens as tax deduction.[14]

Black's Law Dictionary distinguished a tax credit vis-à-vis from a tax deduction:

> Tax credit is defined as the amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability. A tax

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[12] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. 159610, June 12, 2008.

[13] Expanded Senior Citizens Act of 2003.

[14] *M.E. Holding Corporation vs. The Hon. Court of Appeals*, G.R. 160193, March 3, 2008. See Section 4 R.A. 9257.

> credit reduces the taxpayer's liability x x x, compared to a deduction which reduces taxable income upon which the tax liability is calculated. 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.[15]

Before a taxpayer such as the petitioner may claim a tax credit for the 20% sales discount under R.A. 7432, it must first establish that the related gross sales to qualified senior citizens formed part of its taxable income.

The petitioner's reliance on the schedule of sales, 2002 annual ITR, audited financial statement, cash slips and testimony of Financial Manager Romeo David cannot be given weight by this Court because these documentary and testimonial evidence do not sufficiently prove whether the reported sales of P 238,763,286.00 for the taxable year 2002 included the sales corresponding to the claimed 20% sales discounts granted to qualified senior citizens.

In the Decision dated August 10, 2007, the Court in Division correctly specified the following documents necessary to establish petitioner's claimed tax credit:

> Nonetheless, in order to be entitled to its claim, petitioner still has to prove that it declared sales(gross of the 20% discount) it rendered to senior citizens in its Income Tax Return as part of its taxable income for 2002. Going through the pieces of evidence submitted, the Annual Income Tax Return for the taxable year 2002 shows that petitioner

[15] *Commissioner of Internal Revenue vs. Bicolandia Drug Corporation*, G.R. No. 148083, July 21, 2006, 496 SCRA 176 citing Black's Law Dictionary, Centennial Edition, p.1461 (1991).

> reported sales in the amount of P238,763,286.00 under item 14 pertaining to "Sales/Revenue/Receipts/Fees(Sch.1)". The said amount was likewise reflected in petitioner's Audited Financial Statements for the year ended December 31, 2002. However, petitioner failed to show which part of the reported sales pertains to those made to senior citizens. **Petitioner should have submitted a detailed breakdown of its daily net sales as reflected in its detailed General Ledger, Sales Book, and Cash Receipts Book or any other documents which would enable this Court to verify or trace whether the daily gross sales to senior citizens as recorded in the Special Record Books actually formed part of the gross sales reported in the 2002 Annual Income Tax Return**. (Emphasis Supplied.)
>
> Apparently, petitioner's claim must therefore fail.[16]

Petitioner proffered evidence which does not support if the sales, gross of the 20% sales discounts granted to qualified senior citizens formed part of its taxable income. Thus, the Court *en banc* sustains the denial by the Division of petitioner's claimed tax credit as ruled in the Decision dated August 10, 2007 and the Resolution dated October 18, 2007 on the basis that it failed to corroborate by sufficient evidence the allegation that the 20% senior citizen sales discount transactions are incorporated in the gross sales amounting to P238,763,286.00 for taxable year 2002.

WHEREFORE, premises considered, the petition is hereby **DISMISSED** for lack of merit. The assailed Decision dated August 10, 2007 and the Resolution dated October 18, 2007 are **AFFIRMED.**

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[16] Rollo, p. 24.

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SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice