REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SOUTHERN LUZON DRUG CORPORATION, Petitioner,	**EB No. 355** (C.T.A. CASE NO. 7208)
-versus-	Members: ACOSTA, PJ. CASTAÑEDA JR., BAUTISTA UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 0 5 2008

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DECISION

CASANOVA, J:

This is an appeal, by way of a Petition for Review,[1] filed by the petitioner-Southern Luzon Drug Corporation (SOUTHERN LUZON) from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated July 30, 2007 in CTA Case No. 7208 entitled, "*Southern Luzon Drug Corporation, petitioner vs. Commissioner of Internal Revenue, respondent*" denying SOUTHERN LUZON's Petition for Review therein for insufficiency of evidence, and from the Resolution[3] (*Assailed Resolution*) dated December 13, 2007 denying SOUTHERN LUZON's Motion for Reconsideration.

The facts of the case, as culled from the records, are as follows:

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[1] CTA En Banc Rollo, pp. 7-16.
[2] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 17-27.
[3] Annex "C", Petition for Review, CTA En Banc Rollo, pp. 34-35.

"Southern Luzon Drug Corporation (Petitioner) is a domestic corporation organized and existing under the laws of the Philippines with principal office address at No. 7 Mercury Avenue, Bagumbayan, Quezon City.[4] *In 2002, it operated seven (7) drug stores which were duly licensed by the Bureau of Food and Drugs (BFAD), the Department of Trade and Industry, the Bureau of Internal Revenue (BIR), and the local government units where its drugstores are located.*

On various dates, during the period from January to December 2002, petitioner purportedly granted twenty percent (20%) sales discounts in the amount of P7,397,949.35 to qualified senior citizens on their purchases of medicines from petitioner, in compliance with Republic Act No. 7432 and its Implementing Rules and Regulations.

In its 2002 Income Tax Return (ITR) filed with the BIR on April 15, 2003,[5] *petitioner treated the 20% sales discount of P7,397,949.35 as prepaid tax credit by declaring as creditable tax withheld for the first three quarters the amount of P5,142,845 and creditable tax withheld for the fourth quarter the amount of P2,255,105, as shown below:*

Sales/ Revenues/ Receipts/ Fees (Sch.1)	P230,456,682
Less: Cost of Sales/ Services (Sch.2/3)	208,178,196
Gross Income from Operation	P 22,278,486
Add: Non-Operating & Other Income (Sch.4)	948,241
Total Gross Income	P23,226,727
Less: Deductions (Section E)	23,567,707
Taxable Income	P(340,980)
Tax Rate (except MCIT Rate)	32%
Income Tax	P(109,114)
Minimum Corporate Income Tax (MCIT) (Section B)	P 445,570
Tax Due	P445,570
Less: Tax Credits/ Payments	
Prior Year's Excess Credits	P 7,994,822
Creditable Tax Withheld for the First Three Quarters	**5,142,845**
Creditable Tax Withheld Per BIR Form No.2307 for the Fourth Quarter	**2,255,105**
Total Tax Credits/ Payments	P15,392,772

On April 13, 2005, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of P7,397,949.35,

[4] Transcript of Stenographic Notes (TSN) dated July 21, 2005, page 4, CTA Second Division Rollo.
[5] Exhibit "C", CTA Second Division Rollo.

equivalent to the 20% sales discounts allegedly granted by petitioner to qualified senior citizens in 2002.[6]"

(Assailed Decision, pp. 1-3.)

After trial on the merits, the *CTA Second Division* promulgated the *Assailed Decision*[7] on July 30, 2007, the dispositive portion of which reads as follows:

> "***IN VIEW OF THE FOREGOING,*** *the subject Petition for Review is hereby* ***DENIED*** *for insufficiency of evidence.*
>
> ***SO ORDERED."***

Not satisfied with the above decision, SOUTHERN LUZON filed a "Motion for Reconsideration[8]" on August 22, 2007. During the hearing on October 4, 2007, counsel for the respondent submitted petitioner's motion without further arguments.

In the *Assailed Resolution*[9] dated December 13, 2007, the *CTA Second Division* denied SOUTHERN LUZON's Motion for Reconsideration for lack of merit.

On January 15, 2008, SOUTHERN LUZON filed a "Motion for Additional Time[10]" with the *CTA En Banc*. In a Resolution[11] dated January 18, 2008, the Court *En Banc* granted the said motion thereby giving petitioner a final and non-extendible period of fifteen (15) days from January 19, 2008 or until February 4, 2008 (as February 3, 2008 fell on a Sunday), within which to file a Petition for Review. On February 4, 2008, SOUTHERN LUZON filed the instant Petition for Review[12] with the *CTA En Banc*, praying that the Decision dated July 30, 2007 and the Resolution dated December 13, 2007 in CTA Case No. 7208 entitled,

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[6] Exhibit "E". CTA Second Division Rollo.
[7] Supra, note 2.
[8] CTA Second Division Rollo, pp. 358-362.
[9] Supra, note 3.
[10] CTA En Banc Rollo, p. 3.
[11] CTA En Banc Rollo, p. 6.
[12] Supra, note 1.

"*Southern Luzon Drug Corporation, petitioner vs. Commissioner of Internal Revenue, respondent*" be reversed and set aside and that the petitioner's claim for tax credit be granted.

Petitioner raised the sole issue[13] in the instant Petition for Review, to wit:

> WHETHER OR NOT THE HONORABLE COURT OF THE SECOND DIVISION GRAVELY ERRED AND HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DISMISSING PETITIONER'S CLAIM FOR FAILURE TO SHOW THAT ITS GROSS SALES TO SENIOR CITIZENS WERE DECLARED AS PART OF ITS TAXABLE INCOME.

The CTA *En Banc* promulgated a Resolution[14] on February 27, 2008, ordering the respondent-CIR to file a Comment on the said Petition for Review, within ten (10) days from receipt of the said Resolution. No comment was filed by the respondent.

Hence, this decision.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Decision and Resolution.

Petitioner argues that it was able to prove that its gross sales in the amount of P230,456,682.27 included all its sales including the sale to senior citizens. The documents and the witnesses presented by the petitioner were able to show that it really granted the discount. The amount of discount forms part of the Annual Income Tax Return and Audited Financial Statement of petitioner. To require more than this is already beyond the issue of the instant case.

We are not persuaded.

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[13] Ibid, p. 12.
[14] CTA En Banc Rollo, p. 37-38.

As aptly discussed by the *CTA Second Division*, and We quote, to wit:

"Having settled the legal issue, the next question posed is whether petitioner was able to sufficiently prove the factual aspect of its claim for tax credit.

To prove that it actually granted the 20% sales discounts to qualified senior citizens, petitioner presented its Summary of Sales (Net) for 2002,[15] Summary of Sales Discount for 2002,[16] cash slips evidencing the purchases of medicines by senior citizens for 2002,[17] and sample BIR and BFAD Special Record Books prepared by petitioner's drug stores for 2002, consisting of twenty-eight (28) volumes.[18]

The auditing firm, Tato, Gison, Tan & Co., CPA's, through its Partner, Ms. Laura Gison, was commissioned by this Court pursuant to CTA Circular 1-95, as amended, to verify petitioner's claim. The total sales discounts given to senior citizens for the year 2002 are summarized as follows:

		Branch	Amount per Book	Amount per Audit	Variance
1	581	Ultimart San Pablo	1,976,617.53	1,965,468.49	11,149.04
2	592	Caedo, Batangas	2,310,854.74	1,745,197.96	565,656.78
3	615	Bauan, Batangas	1,283,796.81	1,446,418.34	(162,621.53)
4	619	Lopez, GV Vera	437,468.66	440,633.51	(3,164.85)
5	629	Nasugbu, Batangas	546,699.44	512,794.79	33,904.65
6	630	Puerto Princesa	325,092.04	321,909.12	3,182.92
7	634	Pinamalayan	346,892.98	340,434.38	6,458.60
		Total	**7,227,422.19**	**6,772,856.58**	**454,565.61**

After a thorough examination of the various cash slips, in relation to petitioner's Summary of Sales and Discounts for Senior Citizens and the Special Record Books for 2002, the Court finds the report of the commissioned independent CPA to be in order. It is observed though that in the said report,[19] the 20% sales discount granted to qualified senior citizens for the years 2002 wherein the required details for the issuance of cash slips are complete, amounted only to P6,772,856.58. Likewise,

[15] Exhibit "M", CTA Second Division Rollo.
[16] Exhibit "N", CTA Second Division Rollo.
[17] Exhibit "S", CTA Second Division Rollo.
[18] Exhibit "R", CTA Second Division Rollo.

[19] Exhibit "T", CTA Second Division Rollo.

the audited amount of 20% sales discount exceeded the amount per books by P165,786.38 coming from the following branches:

		Branch	Amount per Book	Amount per Audit	Variance
3	615	Bauan, Batangas	1,283,796.81	1,446,418.34	(162,621.53)
4	619	Lopez, GV Vera	437,468.66	440,633.51	(3,164.85)
		Total	**1,721,265.46**	**1,887,051.84**	**(165,786.38)**

Such being the case, the substantiated amount of P6,772,856.58 should be reduced by P165,786.38, thus, leaving only P6,607,070.20 as the proper subject of petitioner's claim.

To be entitled to the claim sought, however, petitioner must first establish that the gross sales made to senior citizens (inclusive of the 20% sales discount) were declared as part of its taxable income. After a careful review of the available documents, the Court finds that petitioner failed to prove that the gross sales to senior citizens were actually declared in its 2002 Annual Income Tax Return.

For taxable year 2002, petitioner reported in its Annual Income Tax Return as sales the amount of P230,456,682.00,[20] which were likewise reflected in its Audited Financial Statements for the same tax year.[21] However, petitioner neglected to present a detailed breakdown of its daily net sales, as reflected in its detailed General Ledger, Sales Book and Cash Receipts Book to show which part of the reported sales comprised of the Gross Sales to senior citizens. The detailed breakdown would have enabled the 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 Annual Income Tax Return."

(Assailed Decision, pp. 7-9.)

Furthermore, the *CTA Second Division* held in the assailed Resolution and We quote:

"In claiming a tax credit certificate allegedly arising from its grant of the 20% sales discount to senior citizens, petitioner is duty-bound to prove its entitlement to the claim. As consistently ruled by this Court, a

[20] Item 14, Sales/Revenues/Receipts/Fees (Sch.1), CTA Second Division Rollo.
[21] Exhibit "D", CTA Second Division Rollo.

> *taxpayer must prove that sales to senior citizens must be declared in its income tax return for that taxable year; and a taxpayer is duty-bound to submit all the required documents to prove its entitlement to the claim. This is in order to verify whether the sales to senior citizens were indeed declared as part thereof.*[22] *Even though the same was not stipulated as an issue by the parties, this Court is not bound to decide only on stipulated issues. The Court may rule upon related issues necessary to achieve an orderly disposition of the case."*
>
> *(Assailed Resolution, p. 1-2.)*

To reiterate, it must be emphasized that petitioner is claiming a tax credit certificate representing the 20% sales discounts it granted to its qualified senior citizen clients. A claim for refund or issuance of tax credit certificate, being in the nature of a claim for exemption, is construed *strictissimi juris* against the taxpayer.[23] Accordingly, it is necessary for petitioner to show that its sales to senior citizens (inclusive of the 20% sales discounts) were indeed reported as part of its taxable income. In as much as petitioner failed to discharge its burden of proof, its claim must necessarily fail.

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed July 30, 2007 Decision and December 13, 2007 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the July 30, 2007 Decision and December 13, 2007 Resolution of the *CTA Second Division* in CTA

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[22] *Central Luzon Drug Corp. v. Commissioner of Internal Revenue*, C.T.A. Case No. 7206, September 12, 2007; and *Bicolandia Drug Corp. v. Commissioner of Internal Revenue*, C.T.A. Case No. 7210, October 3, 2007.
[23] Anno Domini Drug, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6929, July 20, 2006.

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Case No. 7208 entitled, "*Southern Luzon Drug Corporation, petitioner vs. Commissioner of Internal Revenue, respondent*" are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

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