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. 5769

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 08 2001

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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 P256,244.00 for the calendar year ended December 31, 1996. The alleged overpayment arose from Petitioner's interpretation that the 20% sales discounts 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 as jointly stipulated by the parties are as follows:

1. Petitioner Cagayan Valley Drug Corporation is a domestic corporation organized and existing under the laws of the Philippines with principal office address at No. 7 Mercury Ave., Bagumbayan, Quezon City;

2. In 1996, it operated as a franchisee of Mercury Drug Corporation two (2) drug stores as franchisees under the business name and style of "Mercury Drug";

3 Petitioner is duly licensed to operate drug stores by the Bureau of Food and Drugs, the local government units where its drugstores are located and the Department of Trade and Industry;

4. Petitioner filed on April 15, 1997 its Annual Income Tax Return for tax year 1996;

5. Petitioner filed its Annual Income Tax Return together with a Letter of Protest dated 15 April 1997;

6. Instead of claiming the full amount representing the twenty percent (20%) sales discounts it granted to qualified senior citizens on their purchases of medicines in 1996 as tax credit/refund, Petitioner was only able to claim the said amount as a deduction from gross income pursuant to Revenue Regulations No. 2-94 issued by the Respondent;

7. On December 29, 1997, Petitioner filed with Respondent a claim for tax credit/refund for tax year 1996 in the amount of P256,244.00 arising from the twenty percent (20%) sales discount and granted by Petitioner to qualified senior citizens in compliance with Republic Act No. 7432;

8. To date, Respondent has not granted Petitioner's claims for tax credit and has not finally acted upon the same until this date; and

9. The Petitioner's claim was filed within the two (2) years statutory period within which to file a judicial claim for tax credit/refund.[1]

Respondent is of the firm belief that Section 2(i) of Revenue Regulations No. 2-94 is the correct interpretation of Section 4 of Republic Act No. 7432 which provides:

SEC. 2. xxx.

(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 <u>discount shall be deducted by the said establishment from their gross income for income tax purposes or</u>

[1]Joint Stipulation of Facts, CTA records, p.36. Approved by the Court per Resolution, dated August 6, 1999, CTA records, p. 38.

from their gross sales for value-added tax or other percentage tax purposes (Underlining supplied).

This case was submitted for decision on November 29, 2000, sans the evidence and memorandum of the Respondent.

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 the two legal issues in favor of Petitioner. In fact, We have already ruled on these similar issues in previous cases 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 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 issues involved in the case at bar, We are now tasked to resolve the third 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.

Petitioner, due to the voluminous nature of the evidence to be presented, availed of the services of an independent Certified Public Accountant pursuant to CTA Circular No. 1-95, as amended. As a consequence, Mr. Rene Amby Reyes, Partner of Vicente E. Reyes and Associates, was commissioned to verify the accuracy of Petitioner's summary of cash slips/sales discounts granted to senior citizens for the year 1996. In a report dated December 29, 1999, Mr. Reyes described the audit procedures performed and declared that the sales discounts in the amount of P256,135.34 were validly supported by cash slips.

A review of the aforementioned CPA report together with the evidence on record, leads this Court to conclude that the said CPA report should be adopted in the computation but based on the cost of the 20% sales discount, thus:

Net Sales		P33,846,055.00
Add: 20% Discount to Senior Citizens		
(as claimed by Petitioner)		256,244.00
Gross Sales		P34,102,299.00
Less: Cost of Sales		
Merchandise Inventory, beg.	P 6,059,358.00	
Add Purchases	29,263,017.00	
Total Goods Available for Sales	P35,322,375.00	
Less: Merchandise Inventory, End	4,477,359.00	30,845,016.00
Gross Income		P 3,257,283.00
Less: Operating Expenses		3,835,601.00
Net Operating Loss		P 578,318.00
Add: Miscellaneous Income		54,384.00
Net Loss		P 523,934.00

Tax Due	P -
Less: 1) Tax Credit – Cost of 20% Discounts	
with supporting documents (Per CPA report)	
[(P30,845,016.00/P34,102,299.00) x P256,135.34]	P 231,670.56
2) Creditable Tax Withheld	473.84
Total	P 232,144.40
Less: Amount to be refunded per ITR (Exh. E)	473.84
Amount Refundable	P 231,670.56

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 P231,670.56, representing overpaid income tax for the calendar year 1996.

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