REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

CENTRAL LUZON DRUG CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 7447**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JAN 2 3 2008 1:35 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

The twenty percent (20%) discount required by law to be given to senior citizens under *Republic Act No. 7432* (hereafter "*RA 7432*") is a tax credit, not merely a tax deduction from the gross income or gross sales of the establishment concerned *(Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, 456 SCRA 423)*. *aul*

THE CASE

This is a Petition for Review filed on April 17, 2006 by Central Luzon Drug Corporation (hereafter "petitioner") praying for a refund or tax credit in the amount of P44,034,572.14, representing the twenty percent (20%) sales discounts granted to qualified senior citizens on their purchases of medicines during the taxable year 2003, pursuant to *RA 7432*.

THE FACTS

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

Petitioner Central Luzon Drug Corporation is a domestic corporation organized and existing under the laws of the Philippines, with principal office address at No. 28 Shaw Boulevard, Pasig City.

Respondent is the duly appointed Commissioner of Internal Revenue, with office address at BIR National Office Building, Diliman, Quezon City, where he may be served with summons, notices and other legal processes.

In 2003, petitioner operated twenty four (24) drug stores located in Dau; Balanga, Rizal; Camiling; Apalit; Arayat; Balanga, Paterno; Cabanatuan, Maharlika; Tarlac, Juna Luna; Dolores; Cabanatuan, Del Pilar; Subic; Guimba; Gapan; Mabalacat, McArthur; Sindalan; Sta. Cruz; Munoz;

Robinsons Seaport; Iba Magsaysay; Floridablanca; Tarlac, Concepcion; Tarlac, Tanedo; Angeles, McArthur and Robinson's Arayat Gate.

Petitioner is duly licensed to operate said 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.

During the period from January to December 2003, petitioner allegedly granted twenty percent (20%) sales discounts to qualified senior citizens on their purchases of medicines, in compliance with *RA 7432* and its Implementing Rules and Regulations.

On April 14, 2004, petitioner filed its Annual Income Tax Return for taxable year 2003 and treated its senior citizens discount as prepaid tax credit.

On April 12, 2006, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of P44,034,572.14, equivalent to the twenty percent (20%) sales discounts granted by petitioner to qualified senior citizens during the year 2003, in compliance with *RA 7432*. aal

For failure of the respondent to act on the request and in order to toll the running of the two-year prescriptive period, petitioner filed the instant Petition for Review on April 17, 2006.

In her Answer, respondent alleged by way of special and affirmative defenses, to wit:

> "5. The claim for refund is still under examination by the Respondent Bureau of Internal Revenue;
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> 6. The burden of proof is upon the Petitioner to prove that it is entitled to the claim for refund;
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> 7. The grant of a claim for refund is tantamount to an exemption from taxation which should be strictly construed against the taxpayer and in favor of the government;
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> 8. The correct interpretation and enforcement of the provisions on the tax credits of Republic Act No. 7432, entitled "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes" is contained in Revenue Regulations No. 2-94, specifically, Section 2, paragraph (1) so states:
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> > '(1) 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 cinema houses, concert halls, circuses, carnivals and other similar places of cultures, leisure and amusement, which

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discount shall be deducted by the said establishment from their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes.'

9. The provision under Republic Act No. 7432, which states that the twenty percent (20%) sales discounts on purchases or medicines by senior citizens be treated as a tax credit is a misnomer as it runs counter to the solemn duty of the government to collect all taxes;

10. The power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate must be strictly construed and the same must be couched in clear and unmistakable terms in order that it may be applied. (Floro Cement Corporation vs. Gorospe, G.R. No. 46787, Aug. 2, 1991);

11. In Statutory Construction, in cases of ambiguities, the principle that the contemporaneous construction of a statute given by executive officers of the government whose duty is to execute it is entitled to great respect and should ordinarily control the construction, is so firmly embedded in our jurisprudence that no authorities need be cited to support it. (Phil. Assoc. of Free labor Unions vs. BLR). Executive officials are presumed to have familiarized themselves with all the consideration pertinent to the meaning and purpose of the law and to have formed an independent, conscientious and competent expert opinion thereon (Richard vs. Drewry-Hughes Co. 94 S.E. 989)."

Petitioner presented Cyre Clores, Marietta Calica and Nunilon Tagle, as witnesses, and documentary evidence, marked as *Exhibits "A" to "LL"*, inclusive of submarkings, which were all admitted by the Court.

On the other hand, for failure of the respondent to appear despite due notice at the scheduled initial presentation of the evidence for the respondent, upon motion of petitioner, respondent was deemed to have waived her right to present evidence, and petitioner was granted thirty (30) days from June 27, 2007 to file its memorandum, while respondent was given twenty (20) days from notice to file her memorandum. Considering that only petitioner filed its Memorandum on July 25, 2007, the case was deemed submitted for decision on September 24, 2007.

Hence, this decision.

THE ISSUES

Petitioner raised the following issues for this Court's consideration:

I

WHETHER THE 20% SALES DISCOUNT GRANTED TO SENIOR CITIZENS ON THEIR PURCHASE OF MEDICINES SHOULD BE TREATED AS TAX CREDIT DEDUCTIBLE FROM THE TAX DUE AS PROVIDED UNDER RA 7432 OR MERELY AS A DEDUCTION FROM

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GROSS INCOME AS PROVIDED UNDER REVENUE REGULATIONS NO. 2-94.

II

WHETHER OR NOT PETITIONER ACTUALLY GRANTED AND IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN A TOTAL AMOUNT OF P44,034,572.14 REPRESENTING THE DISCOUNTS IT GRANTED TO SENIOR CITIZENS ON THEIR PURCHASES OF MEDICINES IN THE YEAR 2003.

Principal Issue

The foregoing issues raised by petitioner boil down to the principal issue of whether or not petitioner is entitled to a refund or tax credit in the amount of P44,034,572.14, representing the cost of the twenty percent (20%) sales discounts given to qualified senior citizens for the taxable year ending December 31, 2003.

THE COURT'S RULING

The petition is devoid of merit.

Petitioner's contention

Petitioner mainly contends that it is entitled to a tax credit in the total amount of P44,034,572.14 for taxable year 2003, pursuant to *Section 4 of RA 7432*. It posits that *Section 2, paragraph (I) of Revenue Regulations No. 2-*

94 (hereafter *"RR 2-94"*), which provides that the discounts granted to senior citizens shall be deducted by private establishments from gross income for income tax purposes and from gross sales for value-added tax or with percentage tax, is illegal, as it is a mere implementing administrative regulation which cannot modify, alter or amend the clear mandate of the law which it seeks to implement, particularly *Section 4 of RA 7432*.

Tax Credit vs. Tax Deduction

There is nothing novel in this case, as the Supreme Court has already settled the discrepancy between the pertinent provisions of *RA 7432* and *RR 2-94* in a number of cases, in this wise:

> "The 20 percent discount required by law to be given to senior citizens is a tax credit, not merely a tax deduction from the gross income or gross sale of the establishment concerned. A tax credit is used by a private establishment only after the tax has been computed; a tax deduction, before the tax is computed. RA 7432 unconditionally grants a tax credit to all covered entities. Thus, the provisions of the revenue regulation that withdraw or modify such grant are void. Basic is the rule that administrative regulations cannot amend or revoke the law.
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> xxx xxx
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> *Reason for the Senior Citizen Discount: The Law, Not Prompt Payment*

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A distinguishing feature of the implementing rules of RA 7432 is the private establishment's outright deduction of the discount from the invoice price of the medicine sold to the senior citizen. It is, therefore, expected that for each retail sale made under this law, the discount period lasts no more than a day, because such discount is given-and the net amount thereof collected-immediately upon perfection of the sale. Although prompt payment is made for an arm's length transaction by the senior citizen, the real and compelling reason for the private establishment giving the discount is that the law itself makes it mandatory.

What RA 7432 grants the senior citizen is a mere discount privilege, not a *sales discount* or any of the above discounts in particular. Prompt payment is not the reason for (although a necessary consequence of) such grant. To be sure, the privilege enjoyed by the senior citizen must be equivalent to the *tax credit* benefit enjoyed by the private establishment granting the discount. Yet, under the revenue regulations promulgated by our tax authorities, this benefit has been erroneously likened and confined to a *sales discount*.

To a senior citizen, the monetary effect of the privilege may be the same as that resulting from a *sales discount*. However, to a private establishment, the effect is different from a simple reduction in price that results from such discount. In other words, the *tax credit* benefit is not the same as a *sales discount*. To repeat from our earlier discourse, this benefit cannot and should not be treated as a *tax deduction*.

To stress, the effect of a *sales discount* on the *income statement* and *income tax return* of an establishment covered by RA 7432 is different from that resulting from the *availment* or *use* of its *tax credit* benefit. While the former is a deduction *before*, the latter is a deduction *after*, the *income tax* is computed. As mentioned earlier, a discount is not necessarily a *sales discount*, and a *tax credit* for a simple discount privilege should not be automatically treated like a *sales discount*. *Ubi lex non distinguit, nec nos distinguere debemus*. Where the law does not distinguish, we ought not to distinguish.

Sections 2.i and 4 of Revenue Regulations No. (RR) 2-94 define *tax credit* as the 20 percent discount deductible from *gross income* for *income tax* purposes, or from *gross sales* for VAT or other percentage tax purposes. In effect, the *tax credit* benefit under RA 7432 is related to a *sales discount*. This contrived definition is improper, considering that the latter has to be deducted from *gross sales* in order to compute the *gross income* in the *income statement* and cannot be deducted again, even for purposes of computing the *income tax*.

When the law says that the cost of the discount may be claimed as a *tax credit*, it means that the amount – when claimed – shall be treated as a reduction from any tax liability, plain and simple. The option to avail of the *tax credit* benefit depends upon the existence of a tax liability, but to limit the benefit to a *sales discount* – which is not even identical to the discount privilege that is granted by law – does not define it at all and serves no useful purpose. The definition must, therefore, be stricken down." *(Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, 456 SCRA 414)*

In the recent case of *Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (496 SCRA 176, [2006])*, the Supreme Court ruled that *RR No. 2-94* is null and void, to wit:

"From the above discussion, it must be concluded that Revenue Regulations No. 2-94 is null and void for failing to conform to the law it sought to implement. In case of discrepancy between the basic law and a rule or regulation issued to implement said

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law, the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law."

Pursuant to the aforequoted Supreme Court decisions, the 20% sales discounts granted to qualified senior citizens shall be treated as tax credits, conformably to *RA 7432,* and not merely as deductions from gross sales, as provided in *RR 2-94*.

Substantiation of Claim for Refund

We now proceed to the determination of whether or not petitioner's claim for refund in the amount of P44,034,572.14, representing the 20% sales discounts to qualified senior citizens for taxable year 2003 is properly substantiated.

It is basic that the one who is claiming for a tax refund/credit must first prove and establish its right to such claim by presenting evidence to attest to its entitlement to the same. In this case, petitioner has the burden of proving that the gross sales (inclusive of the 20% sales discount) made to senior citizens were declared as part of its taxable income in order to be entitled to its claim for refund/credit.

A scrutiny of the evidence on record shows that petitioner presented its Annual Income Tax Return for taxable year 2003 *(Exhibit "C"),* Audited Financial Statements for the taxable year ended December 31, 2003 (*Exhibit "D"*), Special Record Book *(Exhibit " JJ")*, Summary of petitioner's Sales and Summary of amount of sales discount it granted to senior citizens for the same taxable year *(Exhibits "DD", "EE", "FF" and "FF-1")* and Cash Slips evidencing purchases of medicines by senior citizens for the year 2003 *(Exhibit "II"),* in order to prove their sales to senior citizens. However, the Court finds that petitioner failed to prove that its net sales to senior citizens were declared in its Annual Income Tax Return for taxable year 2003 *(Exhibit "C").*

Petitioner's contention that its claim has been properly substantiated cannot be sustained. To be entitled to the claim sought, 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. The evidence adduced by petitioner shows that petitioner presented Cash Slips and Special Record Books to prove the grant of twenty percent (20%) discount. However, despite the existence of these documentary evidence, petitioner's claim must still be denied, as We cannot determine from the records whether petitioner's gross sales to senior citizens were really declared as part of its total sales amounting to P914,929,308.00, as reflected in its annual income tax return for the taxable year ending December 31, 2003. Petitioner failed to present evidence that the gross sales to senior citizens were included in its total sales. Mere summaries of its sales are not sufficient evidence, as said documents are mere listings of petitioner's sales. As such, the Court cannot determine whether the 20% discounts granted to senior citizens formed part of petitioner's declared income. Petitioner should have presented its detailed General Ledgers, Sales Books and Cash Receipts Books to show which part of the reported sales comprised the gross sales to senior citizens. The detailed breakdown would have enabled the Court to verify and determine whether the gross sales to senior citizens actually formed part of the gross sales reported in its Annual Income Tax Return to which the tax credit will be based. Thus, without the necessary books of account, the Court cannot ascertain whether the amount subject of the claim has been incorporated in its declared income tax for the taxable year 2003.

Conformably to settled jurisprudence, petitioner, as claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. Having failed to discharge the burden in this regard, petitioner's claim must necessarily fail.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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