REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BALIUAG DRUG CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5365

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 13 1998

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DECISION

This case involves a claim for refund of alleged overpaid income tax for the calendar years 1993, 1994 and 1995, arising from petitioner's interpretation that the 20% sales discount granted to senior citizens under Republic Act (R.A.) 7432 should be treated as tax credit instead of a deduction from gross income as opined by the respondent in Revenue Regulations No. 2-94 and BIR Ruling No. 67-95.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the operation of a drugstore located in Plaza Naning, Poblacion, Baliuag, Bulacan under the name and business style "MERCURY DRUG". It is duly licensed by the Bureau of Food and Drugs to sell pharmaceutical products with proper permits & licenses from local government units and other government agencies.

For the years 1993, 1994 and 1995, petitioner granted 20% sales discounts to qualified senior citizens pursuant to R.A. 7432, otherwise known as *"An Act To Maximize The Contribution Of Senior Citizens To Nation Building, Grant Benefits And Special Privileges And For Other Purposes"*. Petitioner treated these discounts as a deduction from its gross income in compliance with Revenue Regulations No. 2-94 issued by the respondent which implemented R.A. No. 7432.

On June 29, 1995, unconvinced with the interpretation of the respondent regarding RA 7432, particularly Section 4(a) thereof, petitioner filed a letter-claim for refund or tax credit with the Bureau of Internal Revenue for the years 1993, 1994 and 1995. This claim represents alleged overpaid income tax arising from respondent's erroneous interpretation that 20% sales discount should be treated as a deduction from gross income for income tax purposes or from gross sales for value-added tax or other percentage tax purposes rather than as a tax credit. In the said letter-request for refund, petitioner treated the 20% sales discounts in complete reversal with respondent's view, that is, as a tax credit rather than as a mere deduction.

On April 15, 1996, petitioner lodged its appeal with this Court in order to toll the running of the two-year judicial prescriptive period to file a claim for refund pursuant to Section 230 of the Tax Code. In its petition for review, petitioner argues that the 20% sales discount granted to senior citizens should be treated as tax credit because Section 4 of RA 7432 provides in clear and unequivocal language that discounts granted to senior citizens may be claimed as TAX CREDIT. It further asseverates that Section 2(i) of Revenue Regulations No. 2-94 which is a mere administrative regulation, cannot modify or alter the clear mandate of said law. Consequently, Section 2(i) of Revenue Regulations No. 2-94 is void and without force and effect for being inconsistent with the statute it seeks to implement.

In answer thereto, respondent raised the following special and affirmative defenses:

> 8. R.A. 7432 is silent as to how and when the cost should be tax credited, hence, the need and subsequent issuance of Revenue Regulations No. 2-94, prescribing the guidelines for the effective and proper implementation of said law as mandated by Section 245 of Tax Code, as amended by P.D. No. 1457.
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> 9. In claim for refund, it is incumbent upon the petitioner to show that it is entitled thereto. Failure of the petitioner to prove the same is fatal to its claim for refund.
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> 10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation. **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)**

> and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**).

Thus, this Court is tasked in resolving the following two legal issues:

1. The proper interpretation of Section 4(a) of Republic Act No. 7432, specifically the treatment of the 20% sales discount on purchase of medicines afforded to senior citizens; and

2. The validity of Revenue Regulations No. 2-94, implementing the aforesaid law insofar as treating the 20% sales discounts as deduction from gross income for income tax purposes and from gross sales for value-added tax or other percentage tax purposes.

After a careful scrutiny and thorough analysis of the antecedent facts of the case, this Court resolves the legal issues in favor of the petitioner.

To give light to the above issues, We are quoting our own ruling in a very recent case of **Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5357, dated April 6, 1998**, wherein we held:

> xxx xxx xxx
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> 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.

For easy reference, the pertinent provisions of law and regulations in question are hereby reproduced, to wit:

> A) Section 4 of Republic Act No. 7432:
>
> "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)
>
> B) Section 2 (i) of RR 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 income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes." (underscoring supplied)

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.

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 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 are 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. 5357, 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 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(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.

xxx xxx xxx

Notably, the above decision settled the legal issues at hand.

However, inasmuch as petitioner did not bother to submit any evidence to prove its entitlement to the refund sought, this Court is denying petitioner's prayer for refund. In our Resolution, dated May 8, 1997, We denied the admission of all the documentary evidence formally offered by petitioner, to wit:

> The Court is now tasked to resolve the formal offer of evidence filed by petitioner. A careful review of the records of this case will reveal that petitioner failed to submit to this Court the evidence he is offering. Nothing in the records will substantiate its request for admission considering that the documents are nowhere to be found. xxx.
>
> WHEREFORE, in view of the foregoing and considering the late filing of said formal offer, the Court resolves to DENY the admission of Exhibits A, B, B-1, C, D, E, F, F-1 to F-7, inclusive, G, H, I and J. The testimonies of petitioner's witnesses, Ms. Melissa Israel and Ms. Anita M. Javier, are ADMITTED as part of the records (stenographic notes) of this case.

Succinctly put, since no evidence has been offered by the petitioner, nothing is submitted to this Court for consideration. Records further show that petitioner did not bother to file a motion for reconsideration nor submitted the said exhibits subsequently. It also failed to file a memorandum.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby DENIED for lack of evidence.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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