Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION
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CAGAYAN VALLEY DRUG CORPORATION
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7610

Members:

ACOSTA, *Chairperson*
BAUTISTA, *and*
CASANOVA, *JJ.*

Promulgated:
DEC 12 2008 ; 2:44 pm

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DECISION

CASANOVA, *J.*

For decision is the instant Petition for Review seeking that judgment be rendered ordering respondent to recognize the tax credit in favor of petitioner in the amount of P1,046,428.69 equivalent to the twenty (20%) percent sale discounts allegedly granted by petitioner to qualified senior citizens for the period of January 1, 2004 to March 20, 2004 on their purchases of medicines as provided for in Republic Act (RA) No. 7432.

Petitioner 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.[1]

Respondent is the duly appointed Commissioner of Internal Revenue with office address at Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

In 2004, petitioner operated seven (7) drug stores located in Tuguegarao, Gonzaga; Roxas, Isabela; Cauayan, Maharlika; Tuguegarao, Gomez; Ilagan, Maharlika; Tuguegarao, Delfino and Aparri, Rizal. It is licensed to operate the said drug stores by the Bureau of Food and Drugs (BFAD), the local government units where its drugstores are located, and the Department of Trade and Industry (DTI).[2]

During the period claimed, petitioner allegedly granted twenty percent (20%) sales discounts to qualified senior citizens on their purchases of medicines in compliance with R.A. No. 7432 and its Implementing Rules and Regulations. The amount of sales discount amounted to P1,046,428.69 and this was granted by petitioner as a pre-paid tax credit pursuant to Republic Act (RA) 7432.[3]

Having treated the twenty percent (20%) as prepaid tax credit, petitioner reflected the discount as "Creditable Tax Withheld" in its Annual Income Tax

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[1] Joint Stipulation of Facts and Issues, Par. 1, Rollo, p. 52.
[2] Ibid. Pars. 2-3.
[3] Ibid. Pars. 4-5, Rollo, pp. 52-53.

return for the year 2004. The pertinent portions of petitioner's 2004 Annual Income Tax Return are shown as follows[4]:

Aggregate Income Tax Due	P 331,658.54
Less: Tax Credits	
Prior Year's Excess Credits	P 9,009,977.08
Creditable Tax Withheld	1,046,428.69
Total Tax Credits	P 10,056,405.77
Tax Overpayment	(P 9,724,747.23)

On April 14, 2007, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of P1,046,428.69 equivalent to the twenty percent (20%) sales discounts granted to qualified senior citizens from January 1, 2004 to March 20, 2004.

Respondent has not granted petitioner's request for a tax credit certificate causing petitioner to file the instant petition on April 16, 2007.

Respondent, in his Answer admitted by this Court in a Resolution dated June 1, 2007, interposed the following special and affirmative defenses[5]:

> "6. The claim for refund is still under examination by the respondent's Bureau;
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> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
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> 8. The grant of a claim for refund [is] tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
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> 9. 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

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[4] Exhibit "C", Rollo, p. 150.
[5] Answer, Rollo, p. 39.

applied (Floro Cement Corporation vs. Gorospe, G.R. No. 46787, August 2,1991).

10. The instant petition for review was filed with this Honorable Court without the mandatory Resolution of the petitioner's Board of Directors authorizing the filing of the instant petition. Therefore, the instant petition was filed without the substantial compliance with the required certification on non-forum shopping per Sec. 5, Rule 7 of the New Rules of Civil Procedure, as amended."

On January 22, 2008, petitioner filed a motion requesting to avail the services of an independent certified public accountant (CPA) in the presentation of voluminous documents pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97. The motion was granted in open court on January 29, 2008 and Mr. Alfonso Katigbac was commissioned as independent CPA.

During the hearing of this case, petitioner presented several testimonial and documentary evidence. On September 2, 2008, respondent submitted the case for decision in open court without presentation of further evidence[6].

The case was submitted for decision in a Resolution dated October 17, 2008[7] after considering petitioner's Memorandum[8] submitted on September 29, 2008, *sans* respondent's Memorandum.

The parties jointly stipulated on the following issues[9]:

1. Whether or not petitioner's claim for refund or tax credit is substantiated by documentary evidence; and

2. Whether or not petitioner actually granted and is entitled to the issuance of a tax credit certificate in the total amount of P1,046,428.69 sales representing the discounts it granted to

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[6] Transcript of Stenographic Notes (TSN), September 2, 2008, p. 3.
[7] Rollo, p. 268.
[8] Rollo, pp. 254-267.
[9] Supra note 1, p. 53.

senior citizens on their purchases of medicines from January 1, 2004 to March 20, 2004.

The issues being interrelated shall be discussed concurrently.

The pertinent laws applicable are R.A. No. 7432 and Revenue Regulations (RR) No. 2-94, partly quoted herein as follows:

"R.A. 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 establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: **Provided, That private establishments may claim the cost as tax credit**; (Emphasis supplied)

"Revenue Regulations No. 2-94

SEC. 2. Definitions. — For purposes of these regulation:

xxx xxx 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 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.** (Emphasis supplied)

xxx xxx xxx

SEC. 4. Recording/Bookkeeping Requirement for Private Establishments. — Private establishments, i.e., transport services, hotels and similar lodging establishments, restaurants, recreation centers, drugstores, theaters, cinema houses, concert

> halls, circuses, carnivals and other similar places of culture, leisure and amusement, giving 20% discounts to qualified senior citizens are required to keep separate and accurate record of sales made to senior citizens, which shall include the name, identification number, gross sales/receipts, discounts, dates of transactions and invoice number for every transaction.
>
> **The amount of 20% discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of the VAT and other percentage taxes**. (Emphasis supplied)"

A reading of the above laws reveals a contradiction as to the treatment of the twenty percent (20%) sales discount granted by private establishments to senior citizens. R.A. No. 7432 provides that the 20% discount can be claimed as tax credit while RR No. 2-94 mandates that it should be treated as a deduction from gross income.

The contradiction at hand had already been put to rest by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation* [10]which ruled:

> "**The 20 percent discount required by the 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. (Emphasis supplied)"

On March 21, 2004, Republic Act No. 9257 took effect, the 20% sales discounts granted to senior citizens after said date shall be treated as deductions

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[10] G.R. No. 159647, April 15, 2005.

from gross income instead of tax credits. Hence, the discounts granted to senior citizens can no longer be claimed as tax credits from March 21, 2004.

Considering that petitioner's refund only covers the period of January 1, 2004 to March 20, 2004, its claim is properly placed.

To establish its entitlement to refund, petitioner submitted its Cash Slips[11], Special Record Books[12], General Ledger[13], and Cash Receipts and Sales Book[14], among others, to prove its claim. Mr. Katigbac, the commissioned independent CPA, verified petitioner's claim and arrived at the following findings:

"Based on the aforementioned procedures, I ascertained that-

1.) The details appearing in the cash slips agree with the details per Special Record Books, as corrected;

2.) The 20% sales discounts were properly computed, and effectively corrected if such were erroneously done;

3.) The total sales discounts given to Senior Citizens for the period January 1 to March 20, 2004, are summarized as follows:

	Branch		Amount per Book		Amount per Audit		Variance
575	**Tuguegarao College Ave.**	P	37,302.58	P	1,954.91	P	35347.67
585	**Roxas Syquia**		31,449.08		30,761.02		688.06
610	**Cauayan Maharlika**		203,578.79		205,995.48		(2,416.69)
614	**Tuguegarao Gomez**		214,120.97		214,530.87		(409.90)
627	**Ilagan Maharlika Highway**		-		183,293.03		(183,293.03)
633	**Tuguegarao Delfino**		326,688.13		323,695.21		2,992.92
649	**Aparri Rizal**		62,403.96		62,098.11		305.85
	Total Sales Discount	P	875,543.51	P	1,022,328.63	P	(146,785.12)

[11] Exhibit "T"
[12] Exhibits "U" to "U-10".
[13] Exhibit "Q".
[14] Exhibit "R".

> The total per audit of Php 1,022,328.63 is detailed in the Summaries of Sales Discounts to Senior Citizens labeled as 'ANNEX C' of my report.[15]"

After a reconciliation of petitioner's documentary evidence, this Court finds the Report of Mr. Katigbac to be in order with some modifications. It is noted that the CPA's finding of 20% sales discount granted to qualified senior citizens is inclusive of the 10% VAT. Hence the P1,022,328.63 discount shall be reduced by P92,938.97. The reduced amount is computed as follows:

Senior Citizen 20% Discount	P 1,022,328.63
Less: 10% VAT	92,938.97
Reduced Claim	P 929,389.66

Nonetheless, to be fully entitled to its claim petitioner must also establish that the related gross sales to senior citizens, inclusive of the 20% discount, were declared as part of its taxable income.

Petitioner reported in its Annual Income Tax Return as part of its sales for the year 2004 the amount of P370,791,913.00[16] which was likewise reflected in its Audited Financial Statements for the same taxable year.[17] Correlating these with the entries in petitioner's Special Record Books[18], General Ledger[19], and Cash Receipts and Sales Book the gross sales corresponding to the 20% discount claimed were found to be properly reflected as part of petitioner's reported sales.

However, considering that petitioner had a Minimum Corporate Income Tax (MCIT) liability for taxable year 2004 in the amount of P331,658.54 the

[15] Exhibit "V", Rollo, pp. 226-243.
[16] Exhibit "C", Rollo, p. 150.
[17] Exhibit "D", Rollo, pp. 163-174.
[18] Exhibits "U" to "U-10".
[19] Exhibit "Q".

same must be deducted from its claim. Although petitioner reported Prior Year's Excess Credits in the amount of P9,009,977.05, against which the MCIT may properly deducted from, petitioner did not present evidence to substantiate the same. As a result this shall further reduce petitioner's claim in the amount computed as follows:

20% Discounts Granted to Senior Citizens	P	929,389.66
Less: MCIT		331,658.54
Excess Tax Credits	**P**	**597,731.12**

As per petitioner's Annual ITR for 2004, it reported an MCIT liability of P331,658.54. This amount shall be deducted from P929,389.66 since what is being claimed is excess unutilized credits, thus arriving at the difference of P597,731.12 which is the amount to be granted to petitioner.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FIVE HUNDRED NINETY SEVEN THOUSAND SEVEN HUNDRED THIRTY ONE PESOS AND 12/100 (P597,731.12)** as excess unutilized tax credits arising from the 20% sales discounts granted to qualified senior citizens for the period January 1, 2004 to March 20, 2004.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division