REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGRIPINO C. BAYBAY SR.,
Petitioner,

- versus -

C.T.A. CASE NO. 5280

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 20 1996

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DECISION

The lone issue involved in this case centers on whether or not a married individual taxpayer can claim additional exemption for a dependent senior citizen under the income tax provisions of the National Internal Revenue Code (Tax Code for brevity), in relation with Republic Act No. 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".

The present controversy commenced when petitioner who is a Filipino citizen, of legal age, married and a resident of Tagripa, Maasin, Southern Leyte, claimed in his individual income tax return for the year 1992 an additional exemption of P5,000.00 for his dependent mother, Maria H. Abilong, a senior citizen, pursuant to the provisions of R.A. No. 7432. Respondent, thru its Revenue District Office disallowed said claim. Thereafter, petitioner filed a formal letter of protest, dated August 1, 1993, invoking the privileges granted by the aforementioned law.

Meanwhile, in the absence of any positive action taken by the respondent on the protest, petitioner likewise claimed in his income tax return for the year 1993 the same additional exemption of P5,000.00 for his dependent mother.

Subsequently, in a second letter of assessment, dated December 19, 1994, issued by the Revenue District Office of Maasin, Southern Leyte, petitioner was required to pay a deficiency tax of P1,158.53, with his claim of additional exemption for the year denied thereunder. Again, petitioner protested the disallowance.

On February 21, 1995, petitioner received a letter, dated February 10, 1995, from the same Revenue District Office denying his second protest and citing the last paragraph of Section 7 of Revenue Regulations No. 2-94 as the basis for the disallowance.

As a result, petitioner moved before the respondent in a letter, dated February 27, 1995, for a reconsideration of the actions of said Revenue District

Office anchoring his arguments on the provisions of R.A. No. 7432, Section 29(l)(2)(A) of the Tax Code, and Article 10 of the Implementing Rules and Regulations of R.A. No. 7432. Respondent, in a letter, dated July 24, 1995, and received by petitioner on August 3, 1995, affirmed the disallowance made by the concerned Revenue District Office.

Hence, this appeal.

The specific provisions of laws and rules and regulations invoked by the parties and intertwined in the case at bar are the following:

> A) Sec. 5 on *Government Assistance of R.A. No. 7432.*
>
> The Government shall provide the following assistance to those caring for and living with the senior citizen:
>
> a) The senior citizen shall be treated as dependents provided for in the National Internal Revenue Code and as such, individual taxpayers caring for them, be they relatives or not shall be accorded the privileges granted by the Code insofar as having dependents are concerned.
>
> B) **Art. 10 on *Personal Tax Exemption for benefactor, Rule 6 of the Implementing Rules and Regulations of R.A. No. 7432.***
>
> A senior citizen shall be treated as dependent provided for in the NIRC and as such shall be accorded the privileges granted by the code in so far as having dependents are concerned . In determining personal exemptions allowable to individuals under Section 29(l)(1) of the NIRC a senior citizen may be treated as dependent. For this purpose, the definition of

the term "head of a family" under the said section shall be deemed amended to refer to the definition under Article 5 of this implementing rules and regulations. The OSCA shall require the senior citizen to declare his benefactor who will be granted the exclusive right to claim him as dependent and issue a certification thereof. The said certification shall be presented by the benefactor to the BIR for purposes of determining personal exemptions.

The personal tax exemption shall take effect January 1992.

C) **Sec. 29(l)(1) of the Tax Code.**

(l) Personal exemptions allowable to individuals.

(1) Basic personal exemption. - For the purpose of determining the tax provided in Sec. 21 (a) of this Title, there shall be allowed a basic personal exemption as follows:

For single individual or married individual judicially decreed as legally separated with no qualified dependents ----- P 9,000.00

For head of a family ----- P12,000.00

For each married individual ----- P18,000.00

Provided, That in case one of the spouses is deriving taxable income, only said spouse shall be allowed to avail of the aforesaid basic personal exemption for married individual. (*As amended by R. A. 7497*)

For purposes of this paragraph , the term "Head of Family" means an unmarried or legally separated man or woman with one or both parents, or with one or more brothers or sisters, or with one legitimate, recognized natural or legally adopted children living with and dependent upon him for their chief support, where such brothers or sisters or children are not more than twenty-one (21) years of age, unmarried and not gainfully employed or where such children, brothers or sister, regardless of age are incapable of self-support because of mental or physical defect.

D) **Sec. 29(1)(2)(A).**

(2) *Additional Exemption.*

(A) *Taxpayers with dependents.* - A married individual or head of a family shall be allowed an additional exemption of Five Thousand Pesos (P5,000.00) for each dependent: *Provided*, That the total number of dependents for which additional exemptions may be claimed shall not exceed four dependents: *Provided further*, That the additional exemption for dependents shall be claimed by only one of the spouses in the case of married individuals. (*As amended by R.A. 7497*)

In case of legally separated spouses, additional exemptions may be claimed only by the spouse who was awarded custody of the child or children: *Provided*, That the total amount of additional exemptions that may be claimed by both shall not exceed the maximum additional exemptions herein allowed.

For purposes of this paragraph, a dependent means a legitimate, recognized natural or legally adopted child chiefly dependent upon and living with the taxpayer if such dependent is not more than twenty-one (21) year of age, unmarried and not gainfully employed or if such dependent, regardless of age, is incapable of self-support because of mental or physical defect.

E) **Sec. 7, last paragraph of Revenue Regulations No. 2-94.**

Caring for a dependent senior citizen shall not entitle the benefactor to claim the additional exemption allowable to a married individual or head of family with qualified dependent children under Sec. 29(1)(2) of the NIRC, as amended.

Petitioner assiduously holds on to the view that Section 5(a) of R.A. No. 7432, supra, insofar as it prescribes that "[t]he senior citizen shall be treated as dependents provided for in the National Internal Revenue Code," has amended the definition of the word "dependent" as stated in Section 29 (I)(2)(A), last paragraph of the Tax Code, supra, so as to include dependent senior citizens, together with dependent children, but not to exceed four (4) dependents. (Memorandum for the Petitioner, pp. 5-6; pp. 60-61, CTA records)

Proceeding from the above theory and further taking into account the other wordings of Section 5(a) of R.A. No. 7432 which states, thus:

> "xxx individual taxpayers caring for them, be they relative or not shall be accorded the privileges granted by the Code insofar as having dependents are concerned",

petitioner submits that he should be entitled to all privileges granted by the Tax Code insofar as having dependents are concerned, inclusive of the grant of additional exemption pursuant to Section 29(I)(2)(A) thereof. (Ibid., p. 6; p. 61, CTA records)

Based on the foregoing premise, petitioner attacks respondent's interpretation of Section 7 (last paragraph) of Revenue Regulations No. 2-94, supra, to the extent that it denies, without any qualification, a person or benefactor caring for a senior citizen additional exemptions under the Tax Code. He goes on to declare that the Implementing Rules and Regulations of R.A. No. 7432, supra, included senior citizens in the group of dependents defined in the term "head of family" under the Tax Code, and when construed together with Section 5(a) of R.A. No. 7432 on the privileges granted by the Tax Code to dependents are concerned, Revenue Regulations No. 2-94 is clearly erroneous, misplaced and run counter to the very provisions of the law it seeks to implement. (Ibid., p. 8; p. 63, CTA records)

Petitioner unequivocally asseverates that "[n]either R.A. 7432 nor the Rules and Regulations implementing the same intend to put a limitation to the privileges granted a benefactor under its provisions, except only those expressly provided for under the NIRC." And that exception or limitation, as he puts it as regards a married individual's claim for additional exemption, applies when the claimant has more than four (4) qualified dependents as provided under Section 29(l)(2)(A) of the Tax Code. (Ibid., p. 9; p. 64, CTA records). Inasmuch as he has not yet claimed for additional exemption for more than four (4) qualified dependents, petitioner advances that as a benefactor, he should be allowed said additional exemption. In this wise, he deems Revenue Regulations No. 2-94 as merely subordinate to R.A. No. 7432 and its Implementing Rules and Regulations.

Lastly, petitioner stresses the point that "where the provision of the law is clear and unambiguous (as in the case at bar) so that there is no occasion for the Court's seeking the legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction." (**Republic Flour Mills, Inc. v. CIR**, 31 SCRA 520; Memorandum for Petitioner, pp. 11-12; pp. 66-67, CTA records)

On the other hand, respondent argues that dependents may be parents, brothers, sisters or children, and now, senior citizens, being cared for by an individual taxpayer, be they relatives or not of the latter, following the provisions of Section 29(l), (1) and (2) of the Tax Code and Sections 5(a) of R.A. No. 7432, supra. She insists however that in line with the latter law, the provisions of the Tax Code in determining dependents must be considered. In such regard, the inclusion of "senior citizen" in the definition of "dependents" under Section 29(l)(2) is not in accord with what is defined by said section which entitles the individual taxpayer to claim additional exemption of P5,000.00 only for his children who may be legitimate, recognized natural or legally adopted. More appropriately, respondent categorizes "senior citizens" as dependents only for the purpose of qualifying the individual taxpayer as "head of family" as provided under Section 29(l)(1) of the Tax Code, supra. (Memorandum for the Respondent, pp. 4-5; p. 72-73, CTA records)

In addition, respondent cites the above Implementing Rules and Regulations of R.A. No. 7432, which so states that "xxx in determining personal exemptions allowable to individuals under Section 29(l)(1) of the NIRC a senior citizen may be treated as dependents," in concluding that "by analogy a senior citizen cannot be claimed as an additional exemption because to do so would be to stretch the provision of the law." Thus, she invokes the rule that statutes granting tax exemptions are to be strictly construed against the taxpayer and liberally in favor of the taxing power. (Ibid., pp. 5-8; pp. 73-76, CTA records)

On the side, respondent rebuts the allegation of the petitioner that Revenue Regulations No. 2-94 is subordinate to the Implementing Rules and Regulations of R.A. 7432. She cites the case of **Arches v. Belosillo**, 20 SCRA 32, to explain that the issuance of a revenue regulation is authorized by statute and as such has the force and effect of law. She adds that the interpretation in Revenue Regulations No. 2-94 is in accord with the provisions of R.A. No. 7432 and its Implementing Rules and Regulations (Ibid., pp. 6-7; pp. 74-75, CTA records)

Undeterred and unconvinced by respondent's memorandum, petitioner vigorously pursued his stance by way of filing a comment thereto on January 12, 1996.

Petitioner nonchalantly remarks, among others, that respondent is confused as to the proper construction of the term "dependent" under the provisions of R.A. No. 7432 vis-a-vis the provisions of the Tax Code; that while admitting that "senior citizens" are now considered dependents under R.A. No. 7432, "respondent, ironically, would still insist that provisions of the NIRC be considered in determining 'dependents' for purposes of additional exemption (p. 4, respondent's memorandum)"; that the phrase "for each dependent" as found in Section 29 (l)(2)(A), first paragraph is a "general term", hence the erroneous conclusion made by respondent that additional exemption is only for children; and lastly, that Section 29 (l)(2)(A), last paragraph of the Tax Code which defines the term "dependent" has been repealed and/or modified by R.A. No. 7432 to include senior citizens. (Comment to Petitioner's Memorandum)

We rule in favor of the petitioner. The controversy that is set upon Us is one that should be resolved in the light of the relevant provisions found in the 1987 Constitution which served as the backbone in the enactment of Republic Act No. 7432 better known as the "Senior Citizen's Law". These constitutional provisions that are an essential part of R.A. 7432 are quoted hereunder, as follows:

> **Article XV, Section 4.**
>
> The family has the duty to care for its elderly members but the State may also do so through just programs of social security.
>
> **Article II, Section 10.**
>
> The State shall promote social justice in all phases of national development.
>
> **Article XIII, Section 11.**
>
> The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. <u>There shall be priority for the needs of the underprivileged sick, elderly, disabled women, and children.</u> The State shall endeavor to provide free medical care to paupers. (Underscoring Ours)

Pursuant to the above-quoted constitutional provisions, the lawmakers then laid down the policies of the law found in Section 1 of Republic Act No. 7432 under the title "Declaration of Policies and Objectives", the relevant portions are quoted as follows:

a) to motivate and encourage the senior citizens to contribute to nation building;

b) to encourage their families and the communities they live with to reaffirm the valued Filipino tradition of caring for the senior citizens.

In accordance with these policies, this Act aims to:

1) establish mechanisms whereby the contribution of the senior citizens are maximized;

2) adopt measures whereby our senior citizens are assisted and appreciated by the community as a whole;

3) establish a program beneficial to the senior citizens, their families and the rest of the community that they serve.

We focus particularly on Section 1(b) aforequoted which provides that one of the policies of this law (R.A. 7432) is to reaffirm the valued Filipino tradition of caring for the senior citizens. The word "encourage" is synonymous with the term "to motivate" and one of the primary tools often used by lawmakers to motivate people is to grant them tax exemptions and this is evident when this law broadened the term "head of the family" to include those who are not related to the senior citizen so long as these people take care of a senior citizen as his/her dependent, thus, entitling such benefactor to tax exemptions. It is a sad reality in our fast-paced society that senior citizens are often considered as burdens to their families and to the community in general principally because they are no longer as productive as compared to their younger counterparts. Very often, those belonging to this age group (60 and above) are saddled with various kinds of ailments and disease making them increasingly dependent upon others for extra attention and care. The economic conditions of our country today make it very difficult for the immediate family members of these senior citizens to bear the burden of taking care of them, more so, if these persons are not related to such senior citizens. Republic Act No. 7432 was enacted to provide a mechanism whereby people are encouraged to carry out the moral obligation of taking care of our senior citizens by granting among others tax exempt privileges for those people who will take them into their custody and care. By providing tax exempt benefits, these benefactors are assured that their efforts will be well compensated and recognized by the state. This was primarily done to motivate a large part of the community, whether related or not, to take care of its senior citizens. In weighing the views espoused by both parties, this Court took this policy of encouragement into important consideration. The basic principles for the construction of statutes tells us that a statute must be read in such a way as to give effect to the purpose projected in the statute (Lopez, Jr. v. Court

of Appeals, 215 SCRA 512). Viewed in this light, the Court cannot subscribe to respondent's theory that restricts the term "dependent" found in R.A. 7432 to qualify the taxpayer to personal exemptions alone as provided in Section 29(1)(1) of the Tax Code and not to additional exemptions found in Section 29(1)(2)(a) of the same code. Section 5 of Republic Act 7432 is clear when it provides, thus:

> **Section 5.**
>
> a) The senior citizen shall be treated as dependents provided for in the National Internal Revenue Code and as such, individual taxpayers caring for them, be they relatives or not shall be accorded the privileges granted by the code insofar as having dependents are concerned.

The law provides that senior citizens shall be treated as dependents as provided in the NIRC and there are two instances when the term "dependent" is used in this code to qualify individual taxpayers to exemptions and these are in Section 29(1)(1) and Section 29(1)(2)(a) both referring to personal exemptions and additional exemptions. The wordings of Section 5 of R.A. 7432 mentions the term "dependent" without making any distinction as to whether it refers to personal exemption or additional exemption. It is a well-known maxim in statutory construction that where the law does not distinguish, we should not distinguish **(Robles v.**

Zambales Chromite Mining Company, 104 Phil. 688). The respondent's reliance on Section 7 of Revenue Regulations No. 2-94 implementing R.A. 7432 which limits the exemptions granted to benefactors of senior citizens to the personal exemption of ₱12,000.00 only and not to the additional exemption of ₱5,000.00, cannot be given weight as this is not in harmony with the purpose of the law. In the case entitled **Commissioner of Internal Revenue v. Court of Appeals, 240 SCRA 368,** the Supreme Court delineated the proper relationship of an administrative regulation with the law which it seeks to implement, when it declared, thus:

> "The authority of the Minister of Finance (now the Secretary of Finance), in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. Much more fundamental than either of the above, however, is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify the law."

In case of conflict between a statute and an administrative order, the former must prevail (**Kilusang Mayo Uno Labor Center v. Honorable Jesus B. Garcia, Jr., 239 SCRA 386).** We are well aware, as respondent argues,

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that a revenue regulation, the issuance of which is authorized by statute has the force and effect of law but this legal maxim admits of exceptions and one is that when such regulations are clearly shown to be in sharp conflict with the governing statute or the Constitution and other laws (**Nestle Philippines, Inc. v. Court of Appeals and Securities and Exchange Commission, 203 SCRA 504**). It is also true that tax exemptions are not favored and that they are construed strictly against the taxpayer, however we find the provisions of R.A. 7432 to be clear and unambiguous so as to leave no room for construction. It is a cardinal principle of statutory construction that where the words and phrases of a statute are not obscure or ambiguous, its meaning and the intention of the legislature must be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction (**Provincial Board of Cebu v. Presiding Judge of Cebu Court of First Instance, Branch IV, 171 SCRA 1**).

Moreover, compared with the National Internal Revenue Code, R.A. 7432 is a special law and a later law which should prevail in case of conflict.

WHEREFORE, in view of the foregoing premises, the petition for review is **GRANTED**. Respondent is hereby **ORDERED** to **CANCEL** the assessments issued against petitioner for the taxable years 1992 and 1993 disallowing the additional exemption of P5,000.00 claimed for his dependent mother who is considered a senior citizen under Republic Act 7432.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this 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