REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOUTHERN LUZON DRUG CORPORATION
(formerly known as Laguna Drug Corporation)
Petitioner,

- versus - **C.T.A. CASE NO. 5770**

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
MAR 0 6 2002

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DECISION

This case involves a claim for refund/tax credit in the amount of P185,684.00 representing overpaid income tax for taxable year 1996 arising from alleged erroneous treatment of the 20% sales discounts granted to qualified senior citizens on their purchases of medicines as deductions from gross income as prescribed by Revenue Regulations No. 2-94 instead of as tax credit as provided for under Republic Act No. 7432, otherwise known as the Senior Citizens Act.

The facts as jointly stipulated by the parties are as follows:

1. Petitioner Southern Luzon Drug Corporation is a domestic corporation organized and existing under the laws of the Philippines with principal office address at No. 7 Mercury Avenue, Bagumbayan, Quezon City.
2. In 1996, it operated two (2) drug stores located at Ultimart Shopping Plaza, San Pablo City and the other at Caedo Commercial Center, Batangas City 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, the Department of Trade and Industry and the Bureau of Internal Revenue.
4. Petitioner filed on April 15, 1997 its Annual Income Tax Return for taxable year 1996.
5. The Annual Income Tax Return was filed by Petitioner under protest.
6. On January 16, 1998, Petitioner filed with Respondent a claim for tax credit/refund for tax year 1996 in the amount of ONE HUNDRED EIGHTY FIVE THOUSAND SIX HUNDRED EIGHTY FOUR PESOS (P185,684.00) arising from the twenty percent (20%) sales discount granted by Petitioner to qualified senior citizens in compliance with Republic Act No. 7432.
7. To date, Respondent has not granted Petitioner's claims for tax credit and has not acted upon the same until this date.

(Joint Stipulation of Facts, CTA records, pages 41-42)

Petitioner alleged that on various dates from January 1 to December 31, 1996, it granted 20% sales discounts on medicines sold to qualified senior citizens pursuant to 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", which discounts amounted to P285,668.00. Petitioner averred that it was forced to claim the said amount as deduction from its gross income for taxable year 1996 in compliance with the provisions of Section 2(i) of Revenue Regulations No. 2-94, which implemented Section 4(a) of R. A. No. 7432.

However, it is Petitioner's view that Section 2(i) of Revenue Regulations No. 2-94 is erroneous considering that Section 4(a) of R.A. No. 7432 clearly provides that "the cost of the 20% sales discounts to senior citizens may be claimed as tax credit" and not as mere deductions from gross income.

Thus, in its administrative claim for refund (CTA records, page 17), Petitioner computed its alleged income tax overpayment as follows:

Net Sales		P 50,725,751.00
Add: 20% Sales Discount to Senior Citizens		285,668.00
Gross Sales		P 51,011,419.00
Less: Cost of Sales		
Merchandise inventory, beginning	P 6,301,713.00	
Purchases	46,612,666.00	
Total merchandise available for sale	P 52,914,379.00	
Less: Merchandise inventory, end	6,514,854.00	46,399,525.00
Gross Profit		P 4,611,894.00
Add: Miscellaneous Income		53,091.00
Total Income		P 4,664,985.00
Less: Operating Expenses		4,124,646.00
Net Income before Income Tax		P 540,339.00
Less: Income subjected to final tax		42,488.00
Net Taxable Income		P 497,851.00
Income Tax Due		P 174,248.00
Less: 1.) Tax Credit (Cost of 20% Sales Disc. to Senior Citizens)	285,668.00	
2.) Final Payment per 1996 ITR	74,264.00	359,932.00
Income Tax Refundable		P (185,684.00)

There being no action on the request for refund/tax credit on the part of the Respondent, Petitioner filed the instant Petition on April 7, 1999, well within the two-year prescriptive period provided under Section 230 [now 229] of the Tax Code.

Respondent, in his Answer, averred by way of Special and Affirmative Defenses that:

1) In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action; and

2) Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action.

In its memorandum, Petitioner asserts that Respondent's definition of the term "tax credit" in paragraph (i) of Revenue Regulations No. 2-94 is contrary to Section 4, paragraph (a) of Republic Act No. 7432; that the intent of Congress is to treat the sales discounts granted to senior citizens as tax credit instead of mere deductions from gross income and that Sec. 2 par. (i) of Revenue Regulations No. 2-94 is a mere implementing administrative regulation and cannot modify, alter or amend the clear mandate of Section 4 of Republic Act No. 7432 which it seeks to implement.

Respondent, on his part, argues that the provision under Republic Act No. 7432 which states that the 20% sales discounts on purchases of 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 taxes. Respondent further contends that the legal provision in question (Sec. 4 of RA 7432) employs the word "may" in the clause 'PROVIDED, that the establishments may claim the cost as tax credit" implying that the availability of the remedy of tax credit is not absolute and mandatory, it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if it so chooses neither does it impose a duty on the part of the government to sit back and allow an important facet of tax collection to be at the sole control and discretion of the taxpayer (citing BIR Ruling 0667-95 dated April 11, 1995). Lastly, Respondent maintains that the rules of Statutory Construction maintains that in cases of ambiguities, the principle that the contemporaneous construction of a statute given by executive officers of the government whose duty it is to execute it, is entitled to great respect and should ordinarily control the construction.

Thus, the issues We are tasked to resolve are the following:

1. Whether or not the 20% sales discounts granted to qualified senior citizens on their purchases of medicines from the Petitioner should be treated as deductions from gross income pursuant to Revenue Regulations No. 2-94, or as tax credit deductible from the tax due pursuant to Republic Act No. 7432; and if the issue is resolved in favor of Petitioner,
2. Whether or not Petitioner has proven with sufficient evidence its claim for refund or tax credit.

We find for the Petitioner.

Anent the first issue, We have already ruled in several cases that the 20% sales discounts granted to qualified senior citizens should be treated as tax credit and not as mere deductions from gross income, said cases are hereinbelow enumerated,

1. *Mercury Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5612, promulgated January 9, 2001*;
2. *Mercury Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5315, promulgated September 6, 2000*;
3. *Trinity Franchising and Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5605, promulgated May 30, 2000*;
4. *M.E. Holding Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5604, promulgated April 25, 2000*;

5. *Vas Salus Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5509, promulgated November 26, 1999*;

6. *Trinity Franchising and Management Corporation vs. CIR, CTA Case No. 5313, promulgated August 18, 1998*;

7. *M.E. Holding Corporation vs. CIR, CTA Case No. 5314, promulgated August 17, 1998*;

8. *Baliuag Drug Corporation vs. CIR, CTA Case No. 5365, promulgated May 13, 1998*;

9. *Del Rosario Drug Corporation vs. CIR, CTA Case No. 5357, promulgated April 6, 1998*;

10. *Sto. Rosario Drug Corporation vs. CIR, CTA Case No. 5367, promulgated February 16, 1998.*

For purposes of discussion, the particular provisions of the law and regulation relied upon by the parties are quoted hereunder:

<u>Section 4(a) of Republic Act No. 7432</u>

"**SECTION. 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".

<u>Section 2(i) of Revenue Regulations No. 2-94</u>

"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 sales for value-added tax and other percentage tax purposes."

In the case of **Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357, promulgated on April 6, 1998,** We further elucidated, viz:

> "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.
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> 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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> x x x x x x x x x
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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."

The Court of Appeals affirmed Our said ruling in the cases of *Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946, promulgated October 19, 1999, and Trinity Franchising and Management Corporation vs. Commissioner of Internal Revenue CA-G.R. SP NO. 60269, promulgated April 4, 2001.*

And in the most recent case of *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 60057, dated May 31, 2001,* the said Court ruled that the 20% sales discounts given to senior citizens in a given year may still be claimed as tax credit despite of a loss incurred and no taxes were paid by Petitioner for the same year. Thus:

> "xxx The main thrust of R.A. 7432 is to provide assistance, benefits and privileges to senior citizens to promote their welfare. One of these privileges is the grant of a 20% discount on the purchase of medicines. By doing so, the state reduces the earnings of drugstores, which amounts to an exercise of the power of eminent domain. xxx To require drugstores to donate 20% of the value of medicines sold, in the form of a discount in prices, amounts to a "taking" under the power of eminent domain. Compensation is thus due to these drugstores and the state, by reason of lack of resources, has devised a tax credit scheme to address this concern. In this way the state does not spend a thing but still complies with its obligation to compensate the drugstores.
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> In this light, we are convinced that a tax credit due to a drug store under R.A.7432 may be carried over to succeeding taxable periods or applied to other internal revenue tax liabilities. xxx The tax credit, as a valid substitute to the traditional mode of cash payment, should, therefore, go to the drugstores in its entirety and without limitations that contradict its nature as a form of just compensation. xxx"

In the same case, the Court of Appeals likewise ruled that the full amount and not only the cost of the 20% sales discounts to senior citizens should be the basis of the tax credit:

> "Lastly, the concept of tax credit as just compensation, leads us to conclude that the term "cost" under Sec. 4(a) of R.A. 7432 refers to cost of acquisition, not the cost of medicines sold to senior citizens, which was already reduced by 20%. Just compensation is the full and fair equivalent of the property taken from the private owner by the expropriator. It is intended to fully indemnify the owner for the loss sustained. The actual, basis or market value of the property is the standard of just compensation. Among the factors considered are the cost of acquisition of the property, the current value of like properties and its actual or potential uses. Clearly, the cost of

medicines sold to senior citizens, which is already discounted does not come close to the full and fair equivalent of the property taken. It should not be the basis of the tax credit."

Therefore, what is now left for Us to determine is whether or not Petitioner was able to sufficiently prove the factual aspect of its claim for refund.

To prove the fact of income tax overpayment, Petitioner must be able to establish the following:

1. that it actually deducted the claimed amount of 20% sales discounts from its gross sales (income) in computing its income tax due for 1996;
2. that it actually paid the corresponding amount of income tax due for 1996 as a result of the deduction of the claimed 20% sales discounts to senior citizens from its gross sales (income); and
3. that the claimed amount of 20% sales discounts to senior citizens is duly supported by cash slips or by copies of official receipts issued by Petitioner to senior citizens.

Based on the evidence on record, Petitioner actually deducted the amount of P259,697.97 representing the 20% sales discounts to senior citizens from its 1996 gross sales of P52,522,162.63 resulting to a net sales of P50,725,750.94 for its two branches, detailed as follows:

			Deductions		
Branch	Exhibits	Gross Sales	20% Disc. to Senior Citizens	Others	Net Sales
Caedo, Batangas	C to C-2-a	P18,941,348.58	P 99,918.82	P -	P 18,841,429.76
Ultimart, Sn Pablo	D to D-2-a	33,580,814.05	159,779.15	1,536,713.72	31,884,321.18
		P52,522,162.63	P259,697.97	P1,536,713.72	P 50,725,750.94

The above net sales amount of P50,725,750.94 or P50,725,751.00 is reflected in Petitioner's audited financial statements and annual income tax return for 1996 as "SALES, net" (Exhibit E-1-a) and "GROSS SALES DURING THE YEAR (Exhibit F-3); respectively. Hence, out of the claimed 20% sales discounts of P285,668.00, only the amount of P259,697.97 or P259,698.00 was actually deducted from Petitioner's gross sales (income) in computing its 1996 income tax liability of P74,264.00 (Exhibit F). Petitioner paid the said income tax liability out of its 1996 creditable taxes withheld of P86.95 and final income tax payment of P74,178.00 (Exhibit F-4).

As certified by the commissioned auditing firm, Vicente E. Reyes and Associates, in its report dated February 21, 2000 (Exhibit K), out of the claimed amount of P285,668.00, only the amount of P284,721.15 (Exhibit K-2) was properly supported by cash slips (Pre-marked as Exhibit M, including submarkings). This Court finds the said report to be in order. Since the substantiated amount of P284,721.15 is inclusive of VAT, it is but proper to exclude the 10% VAT or the amount of P25,883.74. Accordingly, only the amount of P258,837.41 shall become Petitioner's allowable tax credit.

In other words, in computing Petitioner's 1996 overpaid income tax, it becomes necessary to add back to Petitioner's net sales of P50,725,751.00 the amount of P259,698.00 previously deducted from its gross sales. The reason being that the 20% sales discounts to senior citizens is no longer to be treated as deductions from gross income but rather as tax credit.

Consequently, a re-computation of Petitioner's 1996 income tax liability using the figure of P258,837.41 as allowable tax credit will result to an overpaid income tax of P167,944.01, as follows:

Net Sales		P 50,725,751.00
Add: 20% Sales Discount to Senior Citizens		259,698.00
Gross Sales		P 50,985,449.00
Less: Cost of Sales		
Merchandise inventory, beginning	P 6,301,713.00	
Purchases	46,612,666.00	
Total merchandise available for sale	P 52,914,379.00	
Less: Merchandise inventory, end	6,514,854.00	46,399,525.00
Gross Profit		P 4,585,924.00
Add: Miscellaneous Income		53,091.00
Total Income		P 4,639,015.00
Less: Operating Expenses		4,124,646.00
Net Income before Income Tax		P 514,369.00
Less: Income subjected to final tax		42,488.00
Net Taxable Income		P 471,881.00
Income Tax Due		P 165,158.35
Less: 1.) Tax Credits		
a.) 20% Sales Discounts to Senior Citizens	P 258,837.41	
b.) Credtiable Taxes Withheld in 1996	86.95	
2.) Final Payment per 1996 ITR	74,178.00	333,102.36
Income Tax Refundable		P (167,944.01)

WHEREFORE, in view of all the foregoing, Petitioner's claim for tax credit is hereby **GRANTED** but in a reduced amount of P167,944.00. Respondent Commissioner of Internal Revenue is **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of herein Petitioner the amount of ONE HUNDRED SIXTY SEVEN THOUSAND NINE HUNDRED FORTY FOUR PESOS (P167,944.00) representing overpaid income tax for the taxable year 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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