REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

VAS SALUS DRUG CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5509

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 26 1999

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DECISION

This case involves a claim for refund of alleged overpaid income tax in the amount of P23,197.00 for the taxable year 1994 arising from the treatment of the 20% sales discounts granted to qualified senior citizens on their purchases of medicines as a deduction from gross income as prescribed by Revenue Regulations No. 2-94, instead of tax credit as provided for in Republic Act No. 7432 (Senior Citizens Act).

The facts are simple.

Petitioner is a domestic corporation (Exh. A) engaged in the retailing of medicines and other pharmaceutical products (TSN, Sept. 10, 1997, p. 16). It is duly authorized to operate a drugstore under the name and business style of "Mercury Drug" by the Bureau of Food and Drugs (Exh. B), Bureau of Internal Revenue (Exh. C), Department of Trade and Industry (Exh. D), and the Municipality of Tuguegarao, Cagayan (Exhs. E & F).

In compliance with R.A. 7432, otherwise known as Senior Citizens Act, Petitioner granted 20% sales discount on medicines sold to qualified senior citizens.

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For the period from May to December 1994, the sales discounts granted to qualified senior citizens amounted to P35,687.49 (Exh. J-3) which Petitioner deducted from its gross sales in 1994 (TSN, Sept. 10, 1997, p. 39).

Petitioner filed its corporate annual income tax return for 1994 on April 17, 1995 (Exh. K) and the income tax paid for the period was P61,169.16 (Exh. L).

Petitioner allege that Section 2(i) of Revenue Regulations No. 2-94 treating the 20% sales discounts granted to qualified senior citizens as a tax deduction from gross sales is illegal, void and without force and effect inasmuch as Section 4 of R.A. 7432 unequivocally provides that the 20% sales discounts can be claimed as tax credit. Hence, it filed a claim for refund in the sum of P23,197.00 with the BIR on December 27, 1996 (Exh. O).

Contending inaction on the part of the Respondent, and considering further that the two-year reglementary period within which to file a judicial claim was about to lapse, the instant petition was filed on April 14, 1997.

To support its claim, Petitioner presented both testimonial and documentary evidence. Respondent, on the other hand, did not present any evidence but just submitted the case for decision based on the pleadings.

The issues brought to Us for determination are:

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(1) Whether or not the 20% sales discounts granted to qualified senior citizens on their purchases of medicines should be treated as tax credit per Sec. 4 of R.A. 7432 or as deduction from gross (income) sales according to Sec. 2(i) of Revenue Regulations 2-94; and

(2) Corollarily, whether or not there was overpayment of income tax by herein Petitioner.

After a detailed review of the attending facts, evidence submitted and the law and jurisprudence in point, We rule in favor of the Petitioner.

For better perception, the particular provisions of the abovementioned law and regulation are hereunder reproduced:

> "**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)

Section 2(i), Revenue Regulation 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

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> halls, circuses, carnivals and other similar places of culture, leisure and amusement, <u>which discount shall be deducted by the said establishments from their gross sales for value-added tax or other percentage tax purposes</u>." (underscoring supplied)

This is not a case of first impression. In the cases of **Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5367, February 16, 1998, and **Elmas Drug Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5311, August 27, 1998, We ruled that the 20% sales discount should be treated as tax credit and not as mere deduction from gross income.

Moreover, the case of **Del Rosario Drug Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5357, April 6, 1998, cited in **Baliuag Drug Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5365, May 13, 1998, **M. E. Holding Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5314, August 17, 1998, and **Trinity Franchising and Management Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5313, August 18, 1998, further expounded on how the 20% discount to senior citizens should be treated, thus:

> "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

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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

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> 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. 5367, 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."

Prescinding from the above pronouncement, We have no reason to deviate therefrom which has now become ruling case law. We therefore proceed to the second issue.

Evidence will disclose (Exhs. H, I, J, P & Q; TSN, July 14, 1997, Sept. 10, 1997 & Nov. 12, 1997) that herein Petitioner complied with the Memorandum Circular of the Bureau of Food and Drugs (Exh. G). The P35,687.49 which corresponds to the total 20% sales discounts granted to qualified senior citizens in 1994 was deducted from Petitioner's gross sales. Petitioner's income tax liability was then reduced by only 35% in the amount of [illegible]. Consequently, there was an overpayment of income tax in the sum of P23,197.00 representing 65% of P35,687.49, computed as follows:

SALES, Net		P9,334,094.00
Add: Cost of 20% Discount to Senior Citizens		35,687.00
SALES, Gross		P9,369,781.00
COST OF SALES		
Merchandise Invty., beg.	₱ 0.00	
Purchases	11,123,105.00	
Merchandise Invty., end	2,657,871.00	8,465,234.00
GROSS PROFIT		₱ 904,547.00
Add: Miscellaneous income		16,333.00
TOTAL INCOME		₱ 920,880.00
Less: Operating expenses		701,888.00
Net Income Before Income Tax		₱ 218,992.00
Less: Income subjected to final tax		7,731.00
NET TAXABLE INCOME		₱ 211,261.00
INCOME TAX (₱211,261.00 x 35%)		₱ 73,941.00
Less: TAX CREDIT (Cost of 20% Discount to Senior Citizens)		35,687.00
INCOME TAX PAYABLE		₱ 38,254.00
INCOME TAX ACTUALLY PAID		61,451.00
TAX REFUNDABLE/OVERPAID INCOME TAX		₱ (23,197.00)

WHEREFORE, in view of all the foregoing, Respondent is hereby ORDERED to GRANT a REFUND or issue a TAX CREDIT CERTIFICATE to Petitioner in the total amount of P23,197.00 representing the latter's overpaid income tax for the taxable year 1994.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(Dissenting)
AMANCIO Q. SAGA
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

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DISSENTING OPINION

The Majority Opinion is to the effect that the 20% sales discounts on sales of medicines to Senior Citizens is not deductible from gross sales and that the same 20% sales discount in full can be used as tax credit.

I hereby express my Dissent to the Opinion of the majority.

Under Section 4 of Republic Act No. 7432, the senior citizens are entitled to the following:

> "(a) the grant of twenty percent (20%) discount from all establishments relative to the 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;
>
> (b) a minimum of twenty percent (20%) discount on admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals and other similar places of culture, leisure, and amusement;

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Section 4(a) refers to private establishments which are engaged in businesses requiring the use of inventories and purchases of goods as a necessary requirement in order to determine clearly the income of any such taxpayers, (Section 35, Tax Code, as amended by P.D. No. 1994). Under sub-section (a) of Section 4, the private establishments granting the 20% sales discount to senior citizens can directly deduct the 20% sales discount from the gross sales. However, in order to countervail the effect in the reduction of sales income, the same Section 4(a) allows the private establishments to use the cost of the 20% sales discounts as tax credit. The said cost of the 20% sales discounts can be determined by the following formula, thus:

> Cost of Goods sold divided by Sales net of 20% sales discounts equals the percentage rate of the Cost of Goods Sold multiplied by 20% sales discounts at gross amount

Or

$$\frac{₱8,465,234.00}{₱9,334,094.00} = .9069 \times 35,687.00 = ₱32,365.00$$

However, for private establishments granting the 20% sales discounts to senior citizens classified under Section 4(b), the same are directly deductible on the gross sales made to senior citizens as is done under Section 4(a). The only difference is that the private establishments are not allowed to tax credit the cost of the 20% sales discounts.

On the basis of Section 4(a) of Republic Act No. 7432, there is recommended a tax refund or tax credit in the amount of P32,365.00, representing the cost of the 20% sales discount in the aggregate figure of P35,687.00.

In order to clearly reflect the correct amount of Tax Credit or Tax Refund, Petitioner's Profit and Loss statement for taxable year 1994 is presented below:

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Sales net of 20% sales discounts		P9,334,094.00
Less: Cost of Goods Sold		
Beginning Inventory of goods	P 0.00	
Purchases of Goods	11,123,105.00	
Ending Inventory of goods	2,657,871.00	8,465,234.00
Gross Profit		P 868,860.00
Less: Operating expenses		701,888.00
Net operating income		P 166,972.00
Add: Miscellaneous income		16,333.00
Total		P 183,305.00
Less: Income previously subjected to Final tax		7,731.00
Amount subjected to Corporate Income Tax		P 175,574.00
Tax due and actually paid upon filing of the annual income tax return		P 61,451.00
Tax credit equivalent to the cost of the 20% sales discounts		P 32,365.00

As shown in the above presentation of the re-casted Profit and Loss Statement, it is clearly indicated that had the cost of the 20% sales discount been determined and made available at the time the return was filed, Petitioner would have paid only the amount of P29,086.00 in cash and the balance of P32,365.00 be paid in Tax Credit Certificate of the same amount. In view hereof, Petitioner is entitled to a tax refund or tax credit certificate equivalent to the cost of the 20% sales discount or P32,365.00.

AMANCIO Q. SAGA
Associate Judge