REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ELMAS DRUG CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5311

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 27 1998

x - x

DECISION

This case involves a claim for refund of alleged overpaid corporate income tax in the amount of P52,215.00 for the year 1993 and P334,750.00 for the year 1994, arising from petitioner's interpretation of Republic Act 7432, more commonly known as the Senior Citizens Act.

The facts of the case are simple.

Petitioner is a domestic corporation duly organized and existing by virtue of the laws of the Philippines. It is a retailer of pharmaceutical products and operates a drugstore in Naga City under the name and business style of MERCURY DRUG. It is duly licensed by the Bureau of Food and Drugs, with proper permits and licenses from local government units and other government agencies.

Pursuant to the provisions of 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" and Revenue Regulations No. 2-94, petitioner granted 20% sales discounts to qualified senior citizens on their purchases of medicines covering the period of July 19, 1993 to December 31, 1994.

On April 15, 1994, petitioner filed its 1993 Corporation Annual Income Tax Return and claimed, among others, the amount of P80,330.00 representing the 20% sales discounts granted by the petitioner to senior citizens on their purchases of medicines as a deduction from gross income (Exh. J).

On April 17, 1995, petitioner filed its 1994 Corporation Annual Income Tax Return and claimed, among others, the amount of P515,000.00 representing the 20% sales discounts granted by the petitioner to senior citizens on their purchases of medicines as a deduction from gross income (Exh. K).

On March 28, 1995, petitioner filed a claim for refund or credit of overpaid income tax for the taxable year 1993 in the amount of P52,215.00, arising from the alleged error committed by the petitioner in claiming the 20% sales discounts as a deduction from gross income instead of as tax credit as provided for under R.A. 7432 (Exh. M). The overpayment is computed as follows:

Income tax benefit of tax credit	100%
Income tax benefit of tax deduction	35%
Differential	65%

20% discount granted in 1993	P 80,330.00
Multiply by 65%	65%
Overpaid corporate income tax	P52,215.00

Likewise, on December 15, 1995, petitioner filed a claim for refund or credit of overpaid income tax for the taxable year 1994 in the amount of P334,750.00, arising from the alleged error committed by the petitioner in claiming the 20% sales discounts as a deduction from gross income instead of as tax credit as provided for under R.A. 7432 (Exh. N). The overpayment is computed as follows:

Income tax benefit of tax credit	100%
Income tax benefit of tax deduction	35%
Differential	65%
20% discount granted in 1994	P515,000.00
Multiply by 65%	65%
Overpaid corporate income tax	P334,750.00

To support its claim, petitioner formally offered the following pertinent documentary evidence:

1. The audited financial statements of Elmas Drug Corporation for the years ended December 31, 1993 and 1994 (Exh. "I");

2. The Corporation Annual Income Tax Returns for the years 1993 and 1994 (Exhs. J and K);

3. The letter protest, dated April 15, 1994 (Exh. "L");

4. Written claims for refund, dated February 13, 1995, and December 15, 1995 (Exhs. M and N);

5. The certification of the independent certified public accountant, dated August 30, 1996, relating to the accuracy of the Summaries of Sales and

Discounts to Senior Citizens and the examination of the Special Record Books (Exh. "R");

6. The Summaries of Sales and Discounts to Senior Citizens in 1993 and 1994 (Exhs. "R-1" and "R-2); and

7. Pre-marked cash slips.

On December 29, 1995, petitioner filed the instant petition for review with this Court in order to toll the running of two-year prescriptive period under Section 230 of the Tax Code.

The case at bar focuses on the proper interpretation of Section 4(a) of Republic Act No. 7432, particularly on the treatment of the 20% sales discount on purchase of medicine afforded to senior citizens and the validity of Revenue Regulations No. 2-94 insofar as it conforms with the provision of the said law. To be specific, We are tasked to resolve the issue of whether or not the 20% sales discount should be deductible from gross sales for value-added tax or other percentage tax purposes as prescribed under Revenue Regulations No. 2-94 or as a tax credit deductible from the tax due.

Petitioner asseverates that Section 4 of R.A. 7432 provides in clear and unequivocal language that discounts granted to senior citizens may be claimed as tax credit and that Revenue Regulations No. 2-94 which is a mere implementing administrative regulation cannot modify, alter or depart from the clear mandate of

Sec. 4 of R.A. 7432, thus, it is null and void for being inconsistent with the very statute it seeks to implement.

Respondent, on the other hand, submits "that the provision under Republic Act 7432, which states that the 20% sales discounts on purchases of medicines by senior citizens to be treated as tax credit is a misnomer as it runs counter to the solemn duty of the government to collect taxes." Respondent adds "that it is likewise important to note that the legal provision in question employs the word "may", implying that the availability of the remedy of tax credit is not absolute and mandatory and 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 (BIR Ruling 067-95 dated April 11, 1995)*." And lastly, respondent contends that "in Statutory Construction, the principle that the contemporaneous construction of a statute by executive officers of the government whose duty is to execute it is entitled to great respect and should ordinarily control the construction is so firmly embedded in our jurisprudence that no authorities need be cited to support it *(Phil. Association of Free Labor Unions vs. Bureau of Labor Relations, 72 SCRA 396)."*

After a thorough and careful examination of all the evidence, jurisprudence, laws and regulations applicable to the case at bar, this Court rules in favor of the petitioner.

For clarity, quoted hereunder are the provisions of law and regulations apropos to the instant case:

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. (underscoring supplied)

B) Section 2(i) of Revenue Regulations 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 sales for value-added tax and other percentage tax purposes." (underscoring supplied).

The provision of Section 4 of R. A. 7432 is crystal clear. The 20% discounts granted to qualified senior citizens may be claimed as tax credit. The rules of statutory construction declares that, when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says ***(Martin vs. Nacianceno, 19 Phil. 238)***. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them ***(People vs. Mapa, G.R. No. L-22301, August 30, 1967)***.

It is true that the respondent has the power of subordinate legislation effected by her issuance of implementing rules and regulations such as R.R. 2-94 in the case at bar, but said power is not without limit. The administrative regulation must not be in sharp conflict with the governing statute it seeks to implement ***(Nestle Philippines, Inc. vs. Court of Appeals, et al., 203 SCRA 504)***. Revenue Regulations No. 2-94 gave a new meaning to the phrase "tax credit", interpreting it to mean that the 20% discount granted to qualified senior citizens is an amount deductible from the establishment's gross sales, which is completely contradictory to the literal or widely accepted meaning of the said phrase, as an amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability ***(Black's Law Dictionary)***.

In view of such apparent discrepancy in the interpretation of the term "tax credit", the provisions of the law under R.A. 7432 should prevail over the subordinate regulation issued by the respondent under Revenue Regulations No. 2-94. In fact, this Court has already settled the same issue in the cases of **Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367, February 16, 1998; Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357, April 6, 1998;** and **Baliuag Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5365, May 13, 1998**, wherein We ruled in favor of the petitioner and declared that the word "tax credit" should not be given any other meaning.

Having settled the legal issue involved in the case at bar, We are now tasked to resolve the factual issue of whether or not petitioner is entitled to the claim for refund of its overpaid income taxes for the years 1993 and 1994 based on the evidence at hand.

Contrary to the findings of the independent CPA, aside from the unverifiable 20% sales discounts in the amount of P18,653.70 (Exh. R-3), the Court noted some material discrepancies. Not all the details listed in the 1994 "Summary of Sales and Discounts Given to Senior Citizens" correspond with the cash slips presented. There are various sales discounts granted which were not properly computed and there were also some cash slips left unsigned by the buyers. These observations contravene the findings of the independent CPA who certified that except for the amount of P18,653.70, the remaining cash slips listed in the summary prepared by the petitioner were properly represented.

After a careful scrutiny of the documents presented, the Court allows only the amount of sales discounts duly supported by the pre-marked cash slips:

For the year 1993 P80,330.34

For the year 1994:

SUMMARY PAGE NO. Exh. R-2	PER SUMMARY	PER EXHIBIT	ALLOWABLE
1	2,332.43	2,332.43	2,332.43
2	3,489.58	3,489.58	3,489.58
3	2,446.49	2,432.49	2,432.49
4	3,676.34	3,526.46	3,526.46
5	2,549.64	2,549.64	2,549.64
6	3,203.30	3,227.76	3,203.30
7	3,638.98	3,638.98	3,638.98
8	3,992.04	3,992.04	3,992.04
9	3,470.23	3,469.03	3,469.03

10	3,037.59	3,056.31	3,037.59
11	3,310.83	3,310.83	3,310.83
12	4,019.88	4,011.88	4,011.88
13	3,080.36	3,080.36	3,080.36
14	3,733.32	3,731.32	3,731.32
15	3,863.13	3,808.77	3,808.77
16	2,794.26	2,794.26	2,794.26
17	2,919.75	2,919.75	2,919.75
18	3,517.99	3,520.49	3,517.99
19	3,205.80	3,205.80	3,205.80
20	2,364.59	2,379.19	2,364.59
21	2,908.15	2,920.15	2,908.15
22	4,187.56	4,187.56	4,187.56
23	3,304.73	2,941.01	2,941.01
24	3,006.26	3,046.28	3,006.26
25	3,146.41	3,153.21	3,146.41
26	2,645.22	2,645.22	2,645.22
27	2,689.76	2,689.76	2,689.76
28	3,518.01	3,651.19	3,518.01
29	3,197.98	3,197.98	3,197.98
30	3,175.18	3,171.98	3,171.98
31	3,962.89	3,962.89	3,962.89
32	3,669.34	3,648.45	3,648.45
33	2,783.17	2,773.61	2,773.61
34	3,577.96	3,552.90	3,552.90
35	3,654.98	3,585.98	3,585.98
36	3,041.59	2,880.87	2,880.87
37	3,325.67	3,301.13	3,301.13
38	2,665.56	2,622.85	2,622.85
39	2,450.12	2,446.67	2,446.67
40	3,703.82	3,449.14	3,449.14
41	3,283.68	3,222.46	3,222.46
42	3,862.43	4,205.56	3,862.43
43	2,676.82	2,610.36	2,610.36
44	955.77	1,135.81	955.77
45	2,264.72	1,724.67	1,724.67
46	3,210.00	1,437.98	1,437.98
47	2,574.69	2,564.69	2,564.69
48	3,385.00	1,992.37	1,992.37
49	4,088.50	2,857.34	2,857.34
50	4,390.12	4,390.12	4,390.12
51	3,157.63	3,106.96	3,106.96
52	3,403.74	3,216.48	3,216.48
53	3,592.15	3,270.67	3,270.67
54	3,469.55	3,102.10	3,102.10
55	4,117.74	2,864.58	2,864.58
56	5,145.62	-	-
57	5,490.66	575.83	575.83
58	3,501.70	3,036.97	3,036.97
59	4,291.56	4,154.91	4,154.91
60	4,482.31	4,718.84	4,482.31

61	4,857.30	3,696.83	3,696.83
62	3,701.96	3,183.07	3,183.07
63	4,314.51	3,429.14	3,429.14
64	2,468.55	2,399.68	2,399.68
65	2,900.41	2,851.93	2,851.93
66	2,200.11	2,290.58	2,200.11
67	2,394.27	2,260.22	2,260.22
68	2,846.01	2,756.77	2,756.77
69	2,295.29	-	-
70	2,243.08	-	-
71	2,518.05	-	-
72	4,085.18	-	-
73	8,104.13	-	-
74	2,949.46	-	-
75	2,172.53	318.88	318.88
76	2,975.95	-	-
77	2,907.93	1,343.78	1,343.78
78	2,910.72	-	-
79	2,513.98	-	-
80	2,791.03	-	-
81	3,232.67	-	-
82	2,595.92	-	-
83	3,398.63	-	-
84	2,479.25	-	-
85	3,450.81	-	-
86	4,506.42	-	-
87	4,086.15	-	-
88	3,024.28	-	-
89	3,498.22	-	-
90	3,174.38	1,345.13	1,345.13
91	3,325.16	1,470.82	1,470.82
92	2,001.36	87.37	87.37
93	1,398.81	1,231.73	1,231.73
94	1,459.77	1,369.00	1,369.00
95	3,434.61	2,586.91	2,586.91
96	4,156.23	2,840.71	2,840.71
97	2,544.84	2,451.95	2,451.95
98	3,274.28	2,887.31	2,887.31
99	2,652.39	2,513.46	2,513.46
100	3,468.32	3,468.32	3,468.32
101	2,735.71	2,695.60	2,695.60
102	2,952.50	2,958.94	2,952.50
103	3,102.14	3,021.88	3,021.88
104	2,645.61	2,643.04	2,643.04
105	2,975.85	2,892.19	2,892.19
106	3,047.78	2,980.57	2,980.57
107	3,552.08	3,552.08	3,552.08
108	2,804.93	2,844.93	2,804.93
109	2,763.66	2,747.33	2,747.33
110	4,928.11	1,211.19	1,211.19
111	2,718.00	1,669.06	1,669.06

112	2,337.00	2,441.47	2,337.00
113	3,281.50	3,097.44	3,097.44
114	2,533.28	2,530.39	2,530.39
115	2,910.67	2,974.79	2,910.67
116	2,406.63	2,412.47	2,406.63
117	2,157.35	2,178.98	2,157.35
118	3,256.66	2,741.88	2,741.88
119	2,944.98	2,662.34	2,662.34
120	2,004.59	2,177.29	2,004.59
121	2,074.47	2,074.47	2,074.47
122	3,963.91	2,065.45	2,065.45
123	2,475.93	4,074.92	2,475.93
124	3,914.40	3,162.99	3,162.99
125	4,698.54	2,611.24	2,611.24
126	4,931.04	2,737.35	2,737.35
127	4,257.20	2,636.75	2,636.75
128	5,445.84	3,002.24	3,002.24
129	7,218.00	2,620.54	2,620.54
130	14,458.71	3,062.02	3,062.02
131	19,056.85	2,445.51	2,445.51
132	5,593.21	3,010.19	3,010.19
133	9,467.00	679.27	679.27
134	5,894.24	2,371.24	2,371.24
135	6,542.39	3,567.55	3,567.55
136	4,629.44	2,350.23	2,350.23
137	2,537.78	2,594.69	2,537.78
138	2,523.06	3,099.65	2,523.06
139	3,367.08	2,030.74	2,030.74
140	3,004.65	2,905.56	2,905.56
141	2,742.12	2,572.73	2,572.73
142	3,302.70	3,244.52	3,244.52
143	2,800.92	2,800.92	2,800.92
144	2,926.36	2,703.69	2,703.69
145	5,138.64	1,362.72	1,362.72
TOTAL	516,941.74	347,499.50	343,749.38

Hence, only the above amounts which are properly documented can be used as base in computing for the *cost of 20% discount as tax credit*. The overpaid income tax therefore is computed as follows:

For 1993:

Net Sales		P31,080,508.00
Add: 20% Discount to Senior Citizens		80,330.00
Gross Sales		P31,160,838.00
Less: Cost of Sales		
Merchandise Inventory, beg.	P 4,226,586.00	
Add Purchases	29,234,361.00	

Total Goods Available for Sales	P33,460,947.00	
Less: Merchandise Inventory, End	4,875,944.00	28,585,003.00
Gross Income		P 2,575,835.00
Less: Operating Expenses		1,706,491.00
Net Operating Income		P 869,344.00
Add: Miscellaneous Income		72,680.00
Net Income		P 942,024.00
Less: Interest Income Subject to Final Tax		21,140.00
Net Taxable Income		P 920,884.00

Tax Due (920,884 x 35%)		P 322,309.40
Less: 1) Tax Credit (Cost of 20% Discount)		
[(28,585,003.00/31,160,838.00) x 80,330.34]	P 73,690.03	
2) Income Tax Payment for the Year	294,194.00	367,884.03
AMOUNT REFUNDABLE		P 45,574.63

For 1994:

Net Sales		P29,904,734.00
Add: 20% Discount to Senior Citizens		515,000.00
Gross Sales		P30,419,734.00
Less: Cost of Sales		
Merchandise Inventory, beg.	P 4,875,944.00	
Add Purchases	28,138,103.00	
Total Goods Available for Sales	P33,014,047.00	
Less: Merchandise Inventory, End	5,036,117.00	27,977,930.00
Gross Income		P 2,441,804.00
Less: Operating Expenses		1,880,153.00
Net Operating Income		P 561,651.00
Add: Miscellaneous Income		82,207.00
Net Income		P 643,858.00
Less: Interest Income Subject to Final Tax		30,618.00
Net Taxable Income		P 613,240.00

Tax Due (613,240 x 35%)		P 214,634.00
Less: 1) Tax Credit (Cost of 20% Discount)		
[(27,977,930.00/30,419,734.00) x 343,749.38]	P316,156.48	
2) Income Tax Payment for the Year	34,384.00	350,540.48
AMOUNT REFUNDABLE		P 135,906.48

We cannot conclude the adjudication of the issues involved in this case without commenting on the fact that the CPA certification issued by the accounting firm of Vicente E. Reyes and Associates (Exhibit "R") contained inaccurate statements particularly those which virtually guaranteed the integrity and accuracy of the Summaries of Sales and Discounts Given to Senior Citizens (Exhibits "R-1" and "R-2"). This same CPA certification also vouched that the 20% sales discounts were properly computed and that all the cash slips were signed by the purchasers. After a painstaking scrutiny of all the pre-marked cash slips submitted to this Court, it was observed that there were marked discrepancies between the figures contained in these summaries with that of the amounts found in the individual cash slips. This examination gives rise to the conclusion that, contrary to the statements of the accounting firm of Vicente E. Reyes and Associates, the 20% sales discounts granted by petitioner to the senior citizens were not properly computed and not all the cash slips were signed by the purchasers. The weightier conclusion that can be gathered is that this accounting firm (Vicente E. Reyes and Associates) failed to fulfill its solemn duty to perform its task diligently and with faithfulness and honesty expected of an officer of this Court. The inaccurate statements contained in said CPA certification puts the independence and reliability of this accounting firm in question. We will however adopt a liberal stance this time and limit our response to a mere admonition. We will not however hesitate to impose graver sanctions upon a repetition of said acts and omissions.

WHEREFORE, in view of all the foregoing, petitioner's claim for refund is hereby partially **GRANTED**. Respondent is hereby **ORDERED** to **REFUND**, or in the alternative, to **ISSUE** a tax credit certificate in favor of the petitioner the amounts of P45,574.63 and P135,906.48, representing overpaid income tax for the years 1993 and 1994, respectively.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(Concurring and 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ELMAS DRUG CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5311

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 27 1998

x - x

CONCURRING AND DISSENTING OPINION

The majority opinion granted the amounts of P45,574.63 and P135,906.48 representing overpaid income tax for the years 1993 and 1994, respectively. While I agree, in most part, with the conclusion embodied in the decision, I take exception to the majority's computation of petitioner's refundable income tax for the taxable year 1994.

As I have already expressed in my dissenting opinion in the case entitled Trinity Franchising and Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5313 dated August 18, 1998, the refund or tax credit to be granted to petitioner in cases of this nature, should be limited to the taxes it had actually paid for this particular period and not the entire amount representing the cost of the 20% discount.

Section 204 (3) of the old Tax Code and Section 204 (c) of the Tax Reform Act of 1997 provides as follows:

> Section 204. *Authority of the Commissioner to compromise, abate, and refund/credit taxes.*-The Commissioner may-
> (1) x x x
> (2) x x x
> (3) Credit or refund taxes erroneously or illegally received, or penalties imposed without authority x x x.
>
> Section 204(c) of the Tax Reform Act of 1997-"Credit or refund taxes erroneously or illegally received or penalties imposed without authority xxx. Provided, further, that in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made." (Underscoring for emphasis)

A reading of the aforequoted provisions of law as applied to the instant case gives rise to the conclusion that any excess or unapplied portion of the cost of the 20% sales discount is not refundable for the simple reason that Section 204(3) of the old Tax Code speaks only of refund or credit of taxes erroneously or illegally received. In the instant case, no such "cash" was ever received by herein respondent. The right of the taxpayer to tax credit the cost of the 20% sales discount against income tax is a mere privilege which can be availed of only if the income tax per return is sufficient to absorb the same. Consistent with this theory is that no tax credit or carry over to the next taxable year shall be allowed.

Accordingly, I vote to reduce the amount of income tax to be refunded to petitioner for the taxable year 1994 to P34,384.00 detailed as follows:

Tax due per return	P214,634.00
Less: Cost of the 20% sales discount	P316,156.48
Excess of the 20% (not refundable)	P101,522.48
Income Tax paid during the year (refundable)	P 34,384.00

AMANCIO Q. SAGA
Associate Judge