REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TRINITY FRANCHISING AND MANAGEMENT CORPORATION,
Petitioner

- versus -

C.T.A. CASE NO. 5313

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 18 1998

x - x

DECISION

The legal issue which is presented for our consideration is whether or not **the cost of 20% discount** granted by the petitioner pursuant to Republic Act No. 7432 (a.k.a. Senior Citizens Law) to qualified senior citizens on their medicine purchases be treated as a **deduction from the annual tax due (tax credit)**, as claimed by the petitioner or as a **deduction from gross income (sales)**, as claimed by the herein respondent.

Petitioner is a corporation organized and existing under the laws of the Philippines. It is a retailer of pharmaceutical products, and operates a drug store in Daet, Camarines Norte under the name and business style of "Mercury Drug" and is duly licensed by the Bureau of Food and Drugs, the Bureau of Internal Revenue and the Municipality of Daet.

For the years 1993 and 1994, petitioner granted to qualified senior citizens a 20% discount on their medicine purchases pursuant to Republic Act 7432 and its Implementing Rules and Regulations. It totalled ₱31,787.00 for 1993 and ₱129,142.00 for 1994. The said amounts (sales discounts) were treated by petitioner as a deduction from its gross sales for the said years (see pages 3 & 4, pet. memo). As such, petitioner paid to respondent the amounts of ₱57,334 and ₱91,289 as its taxes due for the years 1993 and 1994, respectively (Exhibits L & M).

Petitioner pointed out that the total cost of discount it granted to senior citizens should be **deducted from its taxes due** for the years in question as provided for by RA 7432 and should not be considered as a **mere deduction from its gross sales**, as it did in said years, thus, it stressed that there was an overpayment of income taxes for the said period. Accordingly, on June 26, 1995 and December 15, 1995, petitioner filed with the respondent claims for refund of the excess corporate income taxes paid for the years 1993 & 1994 in the amounts of P20,662.00 and P83,942.00, respectively, (Exhibits O & P).

Both claims were not acted upon by respondent, hence, on December 29, 1995, petitioner filed with this Court the instant petition for review.

Petitioner repleads its stance a quo in the instant petition for review. On the other hand, respondent raised in the usual token of a defense that (1) in an action for refund, the taxpayer has the burden of proof to show that the taxes paid were erroneously or illegally collected xxx and (2) laws are strictly construed against the taxpayer xxx.

As earlier adverted to at the onset, the issue which is presented for our consideration is whether or not the cost of 20% discount granted by petitioner to qualified senior citizens of the Republic on their medicine purchases pursuant to Section 4(a) of RA No. 7432, which states to wit:

> "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)

be treated as a deduction from the annual tax due (tax credit), as claimed by the petitioner, or as a deduction from gross income/sales, as claimed by respondent in its Sec. 2(i), Revenue Regulations No. 2-94, quoted hereunder:

Section 2 (i) of RR 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 or other percentage tax purposes." (underscoring supplied)

This is not the first time that this Court has been confronted with such an issue at hand. We have already resolved the same issue in ***Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367, February 16, 1998***, and ***Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357, April 6, 1998***, anchored on factual circumstances on all fours with the instant petition. In the latter case, this Court ruled and we quote:

> "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.

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 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."

We do not think any different conclusion ought to be reached in the case at bar. Settled is the rule that the first and fundamental duty of the Court is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them. This Court cannot deem itself authorized to depart from the plain meaning of the statute so explicit in terms and so searching in extent. Thus, the cost of the 20% discount given to senior citizens should be treated as a deduction from the annual income tax due.

With regard to the factual issues, records clearly show that petitioner has sufficiently adduced evidence to prove its claim and that the claim for refund was seasonably filed within the reglementary period of two (2) years from the date of payment of the tax pursuant to Sec. 230 of the Tax Code. Thus, the Court has no other recourse but to grant the amount sought to be refunded, less the amounts mentioned in denied exhibits. The computation of which are as follows:

For 1993

Net Sales		P30,329,613.00
Add: 20% Discount to Senior Citizens		31,787.00
Gross Sales		P30,361,400.00
Less: Cost of Sales		
Merchandise inventory, beg.	P 5,813,959.00	
Add Purchases	25,883,890.00	
Total Goods Available for Sales	P31,697,849.00	
Less: Merchandise inventory, end	3,971,811.00	27,726,038.00
Gross income		P 2,635,362.00
Less: Operating Expenses		2,461,733.00
Net Operating Income		P 173,629.00
Add: Miscellaneous Income		37,326.00
Net Taxable Income		P 210,955.00
Tax Due [210,955.00 x 35%]		P 68,459.00

Less: 1) Tax Credit (Cost of 20% Discount)	₱ 25,039.70*	
2) Income Tax Payment for the Year	57,334.00	82,373.70
AMOUNT REFUNDABLE		₱ 13,914.70

*The following denied exhibits were excluded in arriving at allowable 20% sales discounts as tax credit.

Exh.	Date	Cash Slip Invoice No.	Gross Sales	Discount
T-95913	07-23-93	95913	₱ 267.00	₱ 53.40
T-96321	08-23-93	96321	290.70	58.14
T-96337	09-03-93	96337	448.75	89.75
T-96338	09-03-93	96338	252.00	50.40
T-96339	09-04-93	96339	2,930.80	586.16
T-96340	09-04-93	96340	1,422.60	284.52
T-96341	09-06-93	96341	1,881.50	376.30
T-96342	09-06-93	96342	1,168.00	233.60
T-96343	09-06-93	96343	1,028.00	205.60
T-96344	09-06-93	96344	228.40	45.68
T-96345	09-06-93	96345	713.20	142.64
T-96346	09-06-93	96346	979.20	195.84
T-96347	09-06-93	96347	138.75	27.75
T-96348	09-07-93	96348	2,091.60	418.32
T-96349	09-07-93	96349	657.60	131.52
T-96350	09-07-93	96350	1,650.40	330.08
T-96351	09-07-93	96351	676.00	135.20
T-96352	09-08-93	96352	832.00	166.40
T-96353	09-09-93	96353	85.40	17.08
T-96354	09-09-93	96354	369.20	73.84
T-96355	09-09-93	96355	171.50	34.30
T-96356	09-11-93	96356	1,465.40	293.08
T-96357	09-12-93	96357	219.15	43.83
T-96358	09-12-93	96358	36.30	7.26
T-96359	09-13-93	96359	315.75	63.15
T-96360	09-13-93	96360	557.80	111.56
T-96361	09-13-93	96361	182.00	36.40
T-96362	09-13-93	96362	260.00	52.00
T-96363	09-13-93	96363	571.20	114.24
T-96364	09-14-93	96364	73.98	14.80
T-96365	09-14-93	96365	326.40	65.28
T-96366	09-14-93	96366	400.40	80.08
T-96367	09-14-93	96367	122.25	24.45
T-96368	09-14-93	96368	119.70	23.94
T-96369	09-14-93	96369	440.01	88.00
T-96371	09-14-93	96371	69.40	13.88
T-96375	09-16-93	96375	83.52	16.70

T-96378	09-19-93	96378	538.00	107.60
T-96380	09-19-93	96380	244.80	48.96
T-96382	09-19-93	96382	2,668.90	533.78
T-101201	12-15-93	101201	82.25	16.45
T-101253	12-26-93	101253	410.86	82.17
T-101254	12-27-93	101254	324.73	64.95
T-101255	12-27-93	101255	984.60	196.92
T-101256	12-27-93	101256	260.00	52.00
T-101257	12-27-93	101257	395.25	79.05
T-101258	12-28-93	101258	484.80	96.96
T-101259	12-28-93	101259	144.30	28.86
T-101260	12-28-93	101260	144.30	28.86
T-101261	12-29-93	101261	137.20	27.44
T-101262	12-29-93	101262	286.50	57.30
T-101263	12-29-93	101263	373.70	74.74
T-101264	12-30-93	101264	81.02	16.20
T-101265	12-30-93	101265	206.05	41.21
T-101266	12-30-93	101266	71.04	14.21
T-101267	12-30-93	101267	311.95	62.39
T-101268	12-30-93	101268	198.00	39.60
T-101269	12-30-93	101269	121.10	24.22
T-101270	12-31-93	101270	75.60	15.12
T-101271	12-31-93	101271	520.60	104.12
T-101272	12-31-93	101272	23.10	4.62
T-101273	12-31-93	101273	604.50	120.90
T-101274	12-31-93	101274	122.25	24.45
T-101275	12-31-93	101275	395.25	79.05
Total denied exhibits			₱33,736.51	₱ 6,747.30
Less discounts claimed				31,787.00
Allowable discount for tax credit				₱25,039.70

For 1994:

Net Sales		₱29,453,993.00
Add: 20% Discount to Senior Citizens		129,142.00
Gross Sales		₱29,583,135.00
Less: Cost of Sales		
Merchandise inventory, beg.	₱ 3,971,811.00	
Add Purchases	27,100,269.00	
Total Goods Available for Sales	₱31,072,080.00	
Less: Merchandise inventory, end	4,158,791.00	26,913,289.00
Gross income		₱ 2,669,846.00
Less: Operating Expenses		2,491,467.00
Net Operating Income		₱ 178,379.00
Add: Miscellaneous Income		223,953.00
Net Taxable Income		₱ 402,332.00
Tax Due [402,332.00 x 35%]		₱ 136,489.00

Less: 1) Tax Credit (Cost of 20% Discount)	P 123,555.43**	
2) Income Tax Payment for the Year	91,289.00	P 214,844.43
AMOUNT REFUNDABLE		P 78,355.43

**The following denied exhibits were excluded in arriving at allowable 20% sales discounts as tax credit.

Exh.	Date	Cash Slip Invoice No.	Gross Sales	Discount
T-101602	01-06-94	101602	P 472.60	P 94.52
T-101603	01-06-94	101603	114.20	22.84
T-101604	01-06-94	101604	75.60	15.12
T-101605	01-06-94	101605	248.15	49.63
T-102401	01-25-94	102401	819.00	163.80
T-102402	01-25-94	102402	202.50	40.50
T-102403	01-25-94	102403	232.00	46.40
T-106901	07-08-94	106901	429.59	85.92
T-106902	07-08-94	106902	233.10	46.62
T-106903	07-08-94	106903	126.18	25.24
T-106904	07-08-94	106904	234.40	46.88
T-106905	07-08-94	106905	167.30	33.46
T-106906	07-08-94	106906	200.55	40.11
T-106907	07-09-94	106907	247.50	49.50
T-106908	07-09-94	106908	605.64	121.13
T-106909	07-09-94	106909	104.09	20.82
T-106910	07-09-94	106910	373.94	74.79
T-106911	07-10-94	106911	97.44	19.49
T-106912	07-11-94	106912	253.45	50.69
T-106913	07-11-94	106913	169.05	33.81
T-106914	07-11-94	106914	207.60	41.52
T-106915	07-11-94	106915	310.75	62.15
T-106916	07-11-94	106916	123.34	24.67
T-106917	07-11-94	106917	136.55	27.31
T-106918	07-11-94	106918	652.00	130.40
T-106919	07-11-94	106919	287.20	57.44
T-106920	07-11-94	106920	487.55	97.51
T-106921	07-12-94	106921	177.56	35.51
T-106922	07-12-94	106922	328.40	65.68
T-106923	07-12-94	106923	69.90	13.98
T-106924	07-12-94	106924	54.00	10.80
T-106925	07-12-94	106925	250.87	50.17
T-106926	07-12-94	106926	176.54	35.31
T-106927	07-12-94	106927	65.28	13.06
T-106928	07-12-94	106928	53.95	10.79
T-106929	07-12-94	106929	301.96	60.39
T-106930	07-12-94	106930	35.35	7.07
T-106931	07-13-94	106931	572.60	114.52

T-106932	07-13-94	106932	136.55	27.31
T-106933	07-13-94	106933	418.50	83.70
T-106934	07-13-94	106934	185.55	37.11
T-106935	07-13-94	106935	63.00	12.60
T-106936	07-13-94	106936	301.15	60.23
T-106937	07-13-94	106937	433.16	86.63
T-106938	07-14-94	106938	156.89	31.38
T-106939	07-14-94	106939	128.24	25.65
T-106940	07-14-94	106940	114.80	22.96
T-106941	07-14-94	106941	257.10	51.42
T-106942	07-14-94	106942	172.29	34.46
T-106943	07-15-94	106943	43.40	8.68
T-106944	07-15-94	106944	424.69	84.94
T-106945	07-15-94	106945	123.11	24.62
T-106946	07-16-94	106946	258.20	51.64
T-106947	07-16-94	106947	372.63	74.53
T-106948	07-16-94	106948	1,219.20	243.84
T-106949	07-16-94	106949	192.99	38.60
T-106950	07-16-94	106950	289.48	57.90
T-106951	07-17-94	106951	97.44	19.49
T-106952	07-17-94	106952	132.30	26.46
T-106953	07-17-94	106953	69.90	13.98
T-106954	07-17-94	106954	65.80	13.16
T-106955	07-17-94	106955	307.80	61.56
T-106956	07-18-94	106956	42.00	8.40
T-106957	07-18-94	106957	301.15	60.23
T-106958	07-18-94	106958	365.47	73.09
T-106959	07-18-94	106959	173.30	34.66
T-106960	07-18-94	106960	251.30	50.26
T-106961	07-18-94	106961	133.46	26.69
T-106962	07-18-94	106962	424.50	84.90
T-106963	07-18-94	106963	252.63	50.53
T-106964	07-18-94	106964	107.80	21.56
T-106965	07-19-94	106965	572.60	114.52
T-106966	07-19-94	106966	453.45	90.69
T-106967	07-19-94	106967	88.20	17.64
T-106968	07-19-94	106968	160.20	32.04
T-106969	07-19-94	106969	184.70	36.94
T-106970	07-19-94	106970	35.35	7.07
T-106971	07-20-94	106971	200.07	40.01
T-106972	07-20-94	106972	282.94	56.59
T-106973	07-20-94	106973	704.90	140.98
T-106974	07-20-94	106974	162.61	32.52
T-106975	07-20-94	106975	183.92	36.78
T-106976	07-21-94	106976	200.55	40.11
T-106977	07-21-94	106977	210.00	42.00
T-106978	07-21-94	106978	125.65	25.13
T-106979	07-21-94	106979	182.48	36.50
T-106980	07-22-94	106980	84.42	16.88
T-106981	07-22-94	106981	208.00	41.60

T-106982	07-22-94	106982	172.29	34.46
T-106983	07-22-94	106983	80.80	16.16
T-106984	07-22-94	106984	167.44	33.49
T-106985	07-23-94	106985	83.86	16.77
T-106986	07-23-94	106986	298.92	59.78
T-106987	07-23-94	106987	235.34	47.07
T-106988	07-23-94	106988	288.75	57.75
T-106989	07-24-94	106989	97.44	19.49
T-106990	07-24-94	106990	269.05	53.81
T-106991	07-24-94	106991	433.16	86.63
T-106992	07-24-94	106992	414.63	82.93
T-106993	07-24-94	106993	113.35	22.67
T-106994	07-24-94	106994	164.50	32.90
T-106995	07-25-94	106995	114.80	22.96
T-106996	07-25-94	106996	126.70	25.34
T-106997	07-25-94	106997	30.30	6.06
T-106998	07-25-94	106998	127.22	25.44
T-106999	07-25-94	106999	164.29	32.86
T-107000	07-25-94	107000	239.50	47.90
T-113012	01-02-95	113012	200.55	40.11
T-113013	01-02-95	113013	1,250.25	250.05
T-113014	01-02-95	113014	826.74	165.35
T-113015	01-02-95	113015	279.35	55.87
Total denied exhibits			₱27,932.73	₱ 5,586.57
Less discounts claimed				129,142.00
Allowable discount for tax credit				₱123,555.43

IN THE LIGHT OF ALL THE FOREGOING, respondent is hereby **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE** to herein petitioner in the total amount of ₱92,270.13, representing the latter's overpaid income tax payments for the years 1993 and 1994. No pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
AMANCIO Q. SAGA
Associate 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TRINITY FRANCHISING AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5313

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 18 1998

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DISSENTING OPINION

I beg to disagree with the learned opinion of the majority which granted the total amount of ₱92,270.13 representing the cost of the 20% discount granted by petitioner to senior citizens during the taxable years 1993 and 1994.

I do not seek to question the legal basis of the tax refund claimed by petitioner as this has already been well-settled in the cases of **Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367 and Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357** both of which ruled that the cost of the 20% discount given to senior citizens shall be treated as tax credit and not as a deduction from the gross income of the drug company.

My dissent centers on the application of the aforementioned legal principle in cases where the taxpayer has no tax liability for a particular taxable period or where the tax liability is lesser than the cost of the 20% discount granted by the drug companies. I am of the opinion that in the latter case, the refund or tax credit to be granted to petitioner should be limited to the taxes actually paid by it for this particular period and not the entire amount of the cost of the 20% discount granted to senior citizens. In cases where the taxpayer/petitioner has no tax liability or is in a loss position for a particular taxable year, no refund should be granted. This theory is consistent with Section 204(3) of the old Tax Code taken in relation to Section 204(c) of the Tax Reform Act of 1997 and Republic Act No. 7432 (Senior Citizens Law). Section 204 of the old Tax Code is quoted hereunder:

> **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.

Aforesaid Section 204(3) is the same Section 204(c) under the Tax Reform Act of 1997, otherwise known as the Comprehensive Tax Reform Program or CTRP. Accordingly, said subsection (c) thereof provides as follows:

> "Credit or refund taxes erroneously or illegally received or penalties imposed without authority x x x. Provided, further, that <u>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.</u>" (Underscoring for emphasis)

The Senior Citizens Law or Republic Act No. 7432 provides in its Section 4(a), thus:

> "x x x 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 medicine anywhere in the country; Provided, that private establishments may claim the cost as tax credit."

Apparently, both sections 204 of the Old and the New Internal Revenue Codes (CTRP) prohibit the grant of cash refund/tax credit certificate in the absence of an erroneously or illegally received taxes actually paid, as in the case of the cost of the 20% sales discount being claimed by herein petitioner as tax credit against its current year's income tax liability. Thus, if the current year's operation is a net loss operation, or, if the tax due per return is minimal, any unapplied cost of the 20% sales discount may not be refunded or carried forward to the next succeeding taxable year by way of a tax credit certificate.

IN VIEW OF THE FOREGOING, with all due respect to the opinion of the majority, I hereby express by dissent.

AMANCIO Q. SAGA
Associate Judge