REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MERCURY DRUG CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5315

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 06 2000

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DECISION

This case involves a claim for refund of alleged overpaid corporate income tax in the amount of P2,417,536.00 for the year 1993 and P23,075,386.00 for the 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 Regulation No. 2-94 instead of as a tax credit as provided in Republic Act No. 7432 (Senior Citizens Act).

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation organized and existing under the laws of the Philippines (Exh. A). It is a retailer of pharmaceutical products, medicinal and veterinary compounds, toilet preparations, chemicals and drugs and operates a chain of drugstores all over the Philippines. It is duly licensed to operate the drugstores by the Bureau of Food and Drugs (Exh. T-2) with proper permits and licenses from local government units and other government agencies (Exh. V and W).

Pursuant to the provisions of RA 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", Petitioner granted 20% sales discounts on medicines sold to qualified senior citizens on their purchases of medicines.

Records show that for the period April to December 1993, and January to December 1994, the amount representing the 20% sales discount granted by Petitioner to qualified senior citizens totalled P3,719,287.68 and P35,500,593.44, respectively. In both taxable years, Petitioner treated the said 20% sales discount as a deduction from its gross sales to arrive at the net sales (TSN p. 14, August 12, 1997) in compliance with BIR Revenue Regulations No. 2-94. As evident in the said Regulation, the term "tax credit" found in Section 4 of Republic Act 7432 is defined as a deduction from gross income for income tax purposes.

In considering the clear mandate of Section 4, RA 7432 that the sales discount granted to senior citizens can be claimed as tax credit, Petitioner filed two letters addressed to the Commissioner of Internal Revenue dated April 15, 1994 and April 17, 1995, declaring therein that their taxes were erroneously computed because the discounts were treated as a deduction rather than as tax credit (Exhs. K and L).

Meanwhile, on April 15, 1994 and April 17, 1995, Petitioner filed its 1993 and 1994 Annual Income tax return and accordingly paid its income tax due amounting to P123,326,220.00 (Exh. C, C-4) and P128,756,190.00 (Exh. G, G-4), respectively. No amount of claimed tax credit is reflected on the said tax return (Exh. C-6, G-6; TSN pp. 25 and 36, April 24, 1996).

Thus, on June 26, 1995 and December 15, 1995, Petitioner filed with the Respondent Commissioner of Internal Revenue, claims for refund of the overpaid corporate income tax in the amount of P2,417,536.00 for year 1993 and P23,075,386.00 for the year 1994, respectively. The amount representing the overpaid income tax originated from the aforesaid erroneous treatment of the 20% sales discount as a deduction from gross income instead of as tax credit. The computation of Petitioner's overpayment of income tax for the years 1993 and 1994 are illustrated as follows:

TAXABLE YEAR 1993

SALES, Net		P10,228,518,335.00
Add: Cost of 20% Discount to Senior Citizens		3,719,288.00
SALES, Gross		P10,232,237,623.00
COST OF SALES		
Merchandise Inventory, Beg.	P 2,427,972,150.00	
Purchases	8,717,393,710.00	
Goods Available for Sales	P11,145,365,860.00	
Merchandise Inventory, End	2,458,743,127.00	8,686,622,733.00
GROSS PROFIT		P 1,545,614,890.00
Add: Miscellaneous Income		58,247,973.00
TOTAL INCOME		P 1,603,862,863.00
OPERATING EXPENSES		1,226,816,343.00
NET INCOME BEFORE TAX		P 377,046,520.00
Less: Income subjected to final income tax		20,966,602.00
NET TAXABLE INCOME		P 356,079,918.00
INCOME TAX PAYABLE		P 124,627,972.00
LESS: TAX CREDIT (20% Sales Discount To Senior Citizens)	P 3,719,288.00	
TAX ACTUALLY PAID	123,326,220.00	127,045,508.00
TAX REFUNDABLE		P 2,417,536.00

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TAXABLE YEAR 1994

SALES, Net		P11,671,366,402.00
Add: Cost of 20% Sales Discount		

to Senior Citizens		35,500,594.00
SALES, Gross		P11,706,866,996.00
COST OF SALES		
Merchandise Inventory, Beg.	P 2,458,743,127.00	
Purchases	10,316,941,308.00	
Goods Available for Sales	P12,775,684,435.00	
Less: Merchandise Inventory, End	2,928,397,228.00	9,847,287,207.00
GROSS PROFIT		P 1,859,579,789.00
Add: Miscellaneous Income		68,809,864.00
TOTAL INCOME		P 1,928,389,653.00
OPERATING EXPENSES		1,499,422,645.00
NET INCOME BEFORE TAX		P 428,967,008.00
Less: Income subjected to final income tax		25,591,586.00
NET TAXABLE INCOME		P 403,375,422.00
INCOME TAX PAYABLE		P 141,181,398.00
LESS: TAX CREDIT (Cost of 20% Discount to Senior Citizens)	P 35,500,594.00	
TAX ACTUALLY PAID	128,756,190.00	164,256,784.00
TAX REFUNDABLE		P 23,075,386.00

Contending inaction on the part of the Respondent and considering further that the two-year prescriptive period within which to file a judicial claim was about to expire, Petitioner filed the instant Petition for Review on December 29, 1995. Respondent did not file an Answer to the Petition. Thus, upon motion of the Petitioner, this Court, in its resolution dated March 21, 1996, declared Respondent in default and ordered Petitioner to present his evidence ex-parte.

In order to substantiate its claim for refund Petitioner presented as evidence the following pertinent documents, to wit:

1. The Corporation Annual Income Tax Returns for the years 1993 and 1994 (Exh. C and G).

2. The Audited Financial Statements of Mercury Drug Corporation for the years ended December 31, 1993 and 1994 (Exh. B).
3. The Letters of Protest dated April 15, 1994 (Exh. K) and April 17, 1995 (Exh. L).
4. The written claims for refund dated February 13, 1995 (Exh. M) and December 15, 1995 (Exh. N).
5. The judicial affidavits of the Branch Managers from Luzon (Exh. O to O-150) and the written interrogatories of the Branch Managers from Visayas and Mindanao (Exh. O-151-a to Exh. O-160-c).
6. Certification of Independent Certified Public Accountant, dated June 27, 1997 relating to the accuracy of the Register of Senior Citizens Transactions (Exh. S) together with the Summary of Sales Discounts to Senior Citizens.
7. The Register of Senior Citizens Transaction from April 1993 to December 1994 (Exh. S-1 to S-21).
8. Certification of the Independent Certified Public Accountant dated August 4, 1994, relating to the examination of the BFAD special record books, cash receipts books and sale schedule and Mayor's Permit (Exh. T).
9. Listings of Bureau of Food and Drug License to Operate and Mayor's Permits of the various branches of Petitioner (Exh. T-2).
10. Pre-marked License to Operate p. 1 to 201 issued by BFAD.
11. Pre-marked Mayor's Permit (p. 1 to 278) (Exh. W).

Meanwhile, on July 6, 1998, after the case was already deemed submitted for decision, Petitioner filed a manifestation that they will be submitting "truckloads" of cash slips in view of this Court's decision in the case of **Sto. Rosario Drug Corporation vs.**

Commissioner of Internal Revenue, CTA Case No. 5367 promulgated on February 16, 1998, wherein the Petitioner's claim for refund was denied for failure to submit the cash slips.

Thus, on September 28, 1998, this Court promulgated a Resolution requiring Petitioner to submit all the cash slips evidencing the sales to senior citizens for the year 1993 and 1994 in order for this Court to conduct its own examination and verification. Pursuant to the said Resolution, Petitioner submitted on October 15, 1998, 52 boxes of cash slips and 3 more boxes as supplemental compliance on August 26, 1999. This case was considered submitted for decision in our Resolution on September 13, 1999.

Considering the aforestated facts and circumstances attendant to the case at bar, this Court is now confronted to resolve the following issues:

1) Whether or not the 20% sales discounts granted to qualified senior citizens on their purchases of medicines should be treated as tax credit in accordance with Section 4 of RA 7432 or as a deduction from gross (income) sales pursuant to Section 2(i) of Revenue Regulations No. 2-94;

2) Whether or not there was overpayment of income tax by herein Petitioner and;

3) Corollarily, assuming there was overpayment, whether or not Petitioner is entitled to be granted a refund based on the evidence it presented.

After a painstaking scrutiny of the facts, the issues involved, the evidence submitted and the pertinent law and jurisprudence in point, this Court hereby rules in favor of the Petitioner as far as the legal aspect of the case is concerned.

Quoted hereunder are the pertinent provisions of law and regulations applicable to the controversy at bar:

I. 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)

II. 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 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)

To begin with, there is nothing novel involved in the first issue as this Court has already reconciled the conflict between the two aforequoted provision. In the case of **VAS SALUS DRUG CORPORATION vs. CIR, CTA Case No. 5509, Nov. 26, 1999, ELMAS DRUG CORPORATION vs. CIR, CTA Case No. 5311, August 27, 1998** and **STO. ROSARIO DRUG CORPORATION vs. CIR , CTA Case No. 5367, Feb. 16, 1998,** We ruled that the 20% sales discount should be treated as tax credit and not as a mere deduction from gross income. Hereunder are excerpts on how this Court ruled in the aforementioned cases, 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 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.

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." (**Del Rosario Drug Corporation vs. CIR, CTA Case No. 5357, April 6, 1998** cited in **Vas Salus Drug Corporation vs. CIR, CTA Case No. 5509, Nov. 26, 1999, Baliuag Drug Corporation vs. CIR, CTA Case No. 5365, May 13, 1998, M.E. Holding Corporation vs. CIR, CTA Case No. 5314, Aug. 17, 1998,** and **Trinity Franchising and Management Corp. vs. CIR, CTA Case No. 5313, Aug. 18, 1998**)

The Court of Appeals in the case of **Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946 promulgated on October 19, 1999,** agreed with this Court's aforequoted declaration that the provisions of Republic Act No. 7432 prevail over Revenue Regulations No. 2-94 when it ruled , thus:

'In the case of **Commissioner of Internal Revenue vs. Court of Appeals (240 SCRA 368)**, the Supreme Court had the occasion to rule that Administrative issuances must not override but must remain

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consistent and in harmony with the law they seek to apply and implement."

In effect, the Court of Appeals affirmed this Court's decision that the 20% sales discount should be treated as tax credit rather than as a mere deduction from gross income.

Anent the second issue, we rule in the affirmative.

As reflected in Petitioner's return, the amount of P3,719,288.00 and P35,500,594.00 which correspond respectively to the total 20% sales discounts granted to qualified senior citizens for the years 1993 and 1994 were deducted from Petitioner's gross sales (income). With this erroneous computation, it is evident that Petitioner's tax liability is necessarily bigger as compared – if the 20% sales discount is treated as tax credit (illustration previously shown), such that if the cost of the 20% discount was treated as tax credit then the tax liability of the Petitioner will be lesser than what was paid resulting in overpayment of taxes.

We now proceed to the last issue.

After going over the records of the case, We noted some discrepancies and certain irregularities in the cash slips submitted which prompted Us to disallow a portion of the amount claimed by Petitioner.

A complete examination of the documentary evidence submitted by Petitioner, particularly the cash slips of each of the branches of the Petitioner, reveals the following findings:

(1) For the year 1993, the amount which totals P33,926.79 which is found in the Register of Senior Citizens Transactions, have no supporting documents. (see Annex A). For the year 1994, the amount of

P224,269.15 was likewise found to have no supporting documents (see Annex B);

(2) Some cash slips were recorded twice. Thus, for the years 1993 and 1994, the amount of P414.04 and P7,462.66, respectively, are disallowed; (see Annex A and B)

(3) Some of the cash slips in the total amount of P46,536.21 and P559,985.28 for 1993 and 1994, respectively, are overstated when compared with the discounts appearing in the Register of Senior Citizens Transaction. (see Annex A and B)

(4) For the taxable year 1994, this Court noted that some of the cash slips are in the original. This is contrary to the certification issued by the commissioned accountant, Mr. Amado P. Galang of Vicente E. Reyes and Associates, when he stated in the report (Exh. S and T) that he checked all the cash slips and ascertained that the cash slips on file are duplicate or triplicate copies. The existence of original receipts is in clear violation of Section 238 of the Tax Code, as amended, which requires the seller to issue a receipt. The original copy should be issued to the purchaser at the time the transaction is effected and the duplicate shall be kept and preserved by the issuer-seller. Pursuant to BIR Ruling No. 046-89 dated March 27, 1989, a sales invoice is not merely an evidence of a sale but necessarily evidence of payment. If the sales invoice submitted to this Court are original copies, then it follows that no sales transaction ever occurred as there was no invoice given and there was no payment received. Clearly, no 20% discount could be credited in favor of the

seller-Petitioner. Thus, the amount of P25,743,699.32 which correspond to the sales discount reflected in the original copy of the cash slip should likewise be disallowed. (See Annex B)

So, contrary to the allegation of Petitioner that it granted 20% sales discounts to senior citizens in the total amount of P3,719,888.00 for taxable year 1993 and P35,500,554.00 for taxable year 1994, this Court's study and evaluation of the evidence show that for taxable year 1993 only the amounts of P3,522,123.25 and for 1994, the amount of P8,789,792.27 were properly substantiated. The amount of P3,522,123.25 corresponding to 1993 will be further reduced to P2,989,930.43 as this Court's computation is based on the cost of the 20% discount and not on the total amount of the 20% discount based on the decision of the Court of Appeals in **Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-SP No. 49946 promulgated on October 19, 1999,** where it ruled:

> "Thus the cost of the 20% discount represents the actual amount spent by drug corporations in complying with the mandate of RA 7432. Working on this premise, it could not have been the intention of the lawmakers to grant these companies the full amount of the 20% discount as this could be extending to them more than what they actually sacrificed when they gave the 20% discount to senior citizens." (Underscoring supplied).

Similarly the amount of P8,789,792.27 corresponding to taxable year 1994 will be reduced to P7,393,094.28 based on the aforequoted Court of Appeals decision. These reductions are illustrated as follows:

TAXABLE YEAR 1993	
Cost of Sales	P 8,686,622,733.00
Divided by Gross Sales	10,232,237,623.00
Cost of Sales Percentage	84.89%
Adjusted Amount of 20% Discount given to Senior Citizens	3,522,123.25
Multiply by	84.89%
Allowable Tax Credit	P 2,989,930.43

TAXABLE YEAR 1994

Cost of Sales	P 9,847,287,207.00
Divided by Gross Sales	11,706,866,996.00
Cost of Sales Percentage	84.11%
Adjusted Amount of 20% Discount given to Senior Citizens	P 8,789,792.27
Multiply by	84.11%
Allowable Tax Credit	P 7,393,094.28

With the foregoing changes in the amount of discounts granted by Petitioner in 1993 and 1994, it necessarily follows that adjustments have to be made in the computation of the refundable amount which is entirely different from the computation presented by the Petitioner. This Court's conclusion is that Petitioner is only entitled to a tax credit of P1,688,178.43 for taxable year 1993 detailed as follows:

TAXABLE YEAR 1993

SALES, Net		P10,228,518,335.00
Add: Cost of 20% Discount given to Senior Citizens		3,719,288.00
SALES, Gross		P10,232,237,623.00
COST OF SALES		
Merchandise Inventory, Beg.	P2,427,972,150.00	
Add: Purchases	8,717,393,710.00	
Total goods available for sale	P1,145,365,860.00	
Less: Merchandise Inventory, End	2,458,743,127.00	8,686,622,733.00
GROSS PROFIT		P 1,545,614,890.00
Add: Miscellaneous Income		58,247,973.00
TOTAL INCOME		P 1,603,862,863.00
OPERATING EXPENSES		1,226,816,343.00
NET INCOME BEFORE TAX		P 377,046,520.00
Less: Income subjected to final income tax		20,966,602.00
NET TAXABLE INCOME		P 356,079,918.00
INCOME TAX PAYABLE		P 124,627,972.00
LESS: TAX CREDIT (20% Sales Discount given to Senior Citizens)	P 2,989,930.43	
TAX ACTUALLY PAID	123,326,220.00	126,316,150.43
TAX REFUNDABLE		P 1,688,178.43

and no refund or tax credit for taxable year 1994 as the computation below shows that Petitioner, instead of having a tax credit of P23,075,386.00 as claimed in the Petition, still has a tax due of P5,032,113.72 detailed as follows:

TAXABLE YEAR 1994

SALES, Net		P11,671,366,402.00
Add: Cost of 20% Sales Discount given to Senior Citizens		35,500,594.00
SALES, Gross		11,706,866,996.00
COST OF SALES		
Merchandise Inventory, Beg.	P 2,458,743,127.00	
Add: Purchases	10,316,941,308.00	
Total goods available for sale	P12,775,684,435.00	
Less: Merchandise Inventory, End	2,928,397,228.00	9,847,287,207.00
GROSS PROFIT		P 1,859,579,789.00
Add: Miscellaneous Income		68,809,864.00
TOTAL INCOME		P 1,928,389,653.00
OPERATING EXPENSES		1,499,422,645.00
NET INCOME BEFORE TAX		P 428,967,008.00
Less: Income subjected to final income tax		25,591,586.00
NET TAXABLE INCOME		P 403,375,422.00
INCOME TAX PAYABLE		P 141,181,398.00
LESS: TAX CREDIT (Cost of 20% Discount given to Senior Citizens)	P 7,393,094.28	
TAX ACTUALLY PAID	128,756,190.00	136,149,284.28
TAX STILL DUE		P 5,032,113.72

The conclusion of tax liability instead of tax overpayment pertaining to taxable year 1994 has the effect of negating the tax refund of Petitioner because the basis of such refund is the fact that there is tax credit. Under the circumstances, instead of tax credit, Petitioner has a tax liability of P5,032,113.72, hence the refund for the period must fail.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, Revenue Regulations No. 2-94 of the

Respondent is declared null and void insofar as it treats the 20% discount given by private establishments as a deduction from gross sales. Respondent is hereby ORDERED to **GRANT A REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to Petitioner in the reduced amount of P1,688,178.43 representing the latter's overpaid income tax for the taxable year 1993. However, the claim for refund for taxable year 1994 is denied for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(Concurring & 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
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MERCURY DRUG CORPORATION,
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- versus -

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COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
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CONCURRING AND DISSENTING OPINION

The following are the positions of the majority on the following issues, to wit:

1. That the 20% sales discount granted by the private establishments to qualified senior citizens should be treated only as tax credit against corporate income tax liability and not additionally, as deduction from gross sales/receipts of the Petitioner;

2. That the deduction of the 20% sales discount from gross sales/receipts is erroneous because the income tax due would be higher than when the cost of the twenty percent (20%) were used as tax credit;

3. That all the twenty percent (20%) sales discounts granted to senior citizen in the amount of P25,743,699.32 for the year 1994, the sales of which were covered by the original copies of the official receipts are to be considered non-existing sales;

With all due respect to the well-studied opinion of the majority, I humbly express my dissent to all the aforementioned issues.

For purposes of issues No. 1 and No. 2, it is pertinent to quote Section 4(a) of RA No. 7432, thus:

> "a) the grant of twenty percent (20%) discount from all establishments relative to 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."

As can be seen from the opening clause of Section 4(a) aforequoted, it is evident that senior citizens who purchase medicines anywhere in the Philippines shall be entitled to a twenty percent (20%) sales discount. Also, the same subsection 4(a) provides that all private establishments granting the said discount may tax credit the cost thereof against the corporate income tax liability. The issuance therefore by the Commissioner of Internal Revenue of RR No. 2-94 dated August 23, 1993 was unnecessary considering that the law, RA No. 7432, is clear and categorical on these matters.

Issue No.2

Section 4(a) of RA No. 7432 mandates that the twenty percent (20%) sales discount granted to qualified senior citizens by private establishments, Petitioner herein included, said discounts should be deducted from gross sales/receipts and at the same time may use the cost of the twenty percent (20%) sales discount as tax credit. Neither the private establishments nor the Bureau of Internal Revenue has an alternative option.

Issue No. 3

The amount of the sales discounts representing the total amount of P25,743,699.32 was considered disallowed for the simple reason that the sales invoices/receipts covering the sales transactions were evidenced by copies of the official receipts or commercial invoices other than the original copies as required by Section 238 of the Tax Code. It is noted, however, that same Section 238, 2nd paragraph, authorizes the Commissioner in meritorious cases, to exempt any person subject to an internal revenue tax from compliance with the provisions of this Section. (as amended by Executive Order No.

273.) Thus, retail trading establishments not otherwise subject to any percentage tax, like supermarkets, department stores, drug stores, bookstores and groceries, having voluminous transactions daily which render it extremely difficult and inconvenient for them to comply with the requirement of using sales invoices/receipts for every transaction may, upon previous application with the Revenue District Officer of the place where the business is located and approval thereof by the Regional Director having jurisdiction be allowed to use cash register machines with two roll tapes, one to serve as customer's receipts in lieu of the regular sales invoices, and the other to be kept by the establishment for audit and internal tax verification purposes.

A xerox copy of the BIR permit is required to be glued or taped at the back of the machine to which it refers to signify that the use of said machine in lieu of the sales invoices or receipts is duly authorized, (The National Internal Revenue Code, 5th Edition by Hector S. de Leon, p. 652).

As additional information, Section 100(d)(3) of the Tax Code maybe quoted, thus:

> (3) Sales returns, allowances and sales discounts. –
>
> "x x x x x x x x x
>
> Sales discounts granted and indicated in the invoice at the time of sale may be excluded from the gross sales within the same quarter."

Records of the case show that for the period April to December 1993 and January to December 1994, the 20% sales discounts totalled P3,719,287.68 and P35,500,593.44, respectively. However, the written claim for refund is only P2,417,536.00 for 1993 and P23,075,386.00 for 1994. The annual income tax paid for taxable years 1993 and 1994 totalled P123,326,220.00 and P128,756,190.00, respectively.

The allowable Tax Credits may be computed, thus:

1993

Cost of Sales	P 8,686,622,733.00
Divide by Net Sales	10,228,518.335.00
Percentage of Cost of Sales	84.93%
Adjusted amount of 20% discounts to Senior Citizens	P 3,522,123.25
Multiply by	84.93%
Allowable Tax Credit	P 2,991,339.28

1994

Cost of Sales	P 9,847,287,207.00
Divide by Net Sales	11,971,366,402.00
Cost of Sales Percentage	84.37%
Adjusted amount of 20% Sales discount	P 25,743,699.32
Multiply by	84.37%
Allowable Tax Credit	P 21,719,959.40

Computation of Income Tax Refundable

Taxable Year 1993

Net Sales	P10,228,518,335.00
Less: Cost of goods sold	8,686,622,733.00
Gross profit	P 1,541,895,602.00
Less: Operating expenses	1,226,816,343.00
Net Operating income	P 315,079,259.00
Add: Miscellaneous income	58,247,973.00
Total income	P 373,327,232.00
Less: Income subjected to final tax	20,966,602.00
Net amount subject to 35%	P 352,360,630.00
Tax due thereon	P 123,326,220.00
Less previous income tax payments:	
1. 1st, 2nd, & 3rd quarterly ITR -	67,617,590.99
2. Creditable income tax paid	384,734.82
3. Final Annual ITR income tax paid	55,323,894.19
Total	P 123,326,220.00
Balance	- 0 -

Inasmuch as the amount claimed as Tax Refund is only P2,417,536.00 and not the computed amount of P2,991,339.28, the former amount shall be granted as Tax Refund.

Taxable Year 1994

Net Sales	P11,671,366,402.00
Less: Cost of goods sold	9,847,287,207.00
Gross profit	P 1,824,079,195.00
Less: Operating expenses	1,499,422,045.00
Net Operating income	P 324,656,550.00
Add: Miscellaneous income	68,809,864.00
Total income	P 393,466,414.00
Less: Income already subjected to final income tax	25,591,586.00
Net income subject to 35% tax	P 367,874,828.00
Tax due thereon	P 128,756,190.00
Less: Income tax previously paid:	
1. 1st, 2nd, & 3rd quarterly ITR -	86,085,023.00
2. Creditable income tax	287,997.91
3. Annual final ITR payment	42,383,169.09
Total payments	P 128,756,190.00
Balance	- 0 -

The written claim for Cash Refund for taxable year 1994 is P23,075,386.00. A recomputation however, showed the amount of P21,719,959.40. This latter figure should prevail it being lower in amount.

WHEREFORE, in view of the foregoing, I register my dissent to the opinion of the majority and vote to grant the refund in the amounts of P2,417,536.00 for taxable year 1993 and P21,719,959.40 for the taxable year 1994.

AMANCIO Q. SAGA
Associate Judge