REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ANNO DOMINI DRUG, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7438

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JAN 2 9 2008
9:07 a.m.

x- x

DECISION

UY, *J.*:

This is a Petition for Review praying for the issuance of tax credit certificate in favor of petitioner in the amount of P706,524.53 allegedly representing overpaid income taxes for taxable years 2003 and 2004, arising from the erroneous treatment of the 20% sales discounts granted by petitioner to qualified senior citizens on their purchases of medicines.

THE FACTS

As culled from the parties' respective pleadings, the evidence presented, both oral and documentary, as well as the matters contained in their Joint Stipulation of Facts and Issues filed on July 25, 2006[1] , these are the established facts of the case.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at J. P. Rizal Street, Laoag City. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[2]

As a franchisee under the business name and style of "Mercury Drug", petitioner is duly licensed by the Department of Trade and Industry, the Bureau of Food and Drugs, and the local government unit of Laoag City to operate a drug store.[3]

On April 15, 2004 and April 14, 2005, petitioner filed its Annual Income Tax Returns reflecting the respective amounts of P102,624.74 and P139,146.26 as income taxes for taxable years 2003 and 2004, respectively.[4]

Relying on the mandate of Republic Act (RA) No. 7432 (Senior Citizens Law),[5] petitioner filed with the BIR a letter dated April 12, 2004, questioning the erroneous treatment of the 20% sales discounts to senior citizens as deductions from gross income rather than as tax credits.[6]

On March 8, 2006, petitioner filed with respondent a claim for tax credit/refund in the total amount of P706,524.53, representing the cost of the

[1] Joint Stipulation of Facts (JSFI), Docket pp. 69-71, approved in the Resolution dated August 8, 2006,Docket, p.73.
[2] Par. 1, JSFI, Docket, p. 69.
[3] Par. 2, JSFI, Docket, p. 69.
[4] Par. 3, JSFI, Docket, p. 69; Exhibits "B" and "P", Docket, pp. 178-179 and 196-197, respectively.
[5] "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes."
[6] Exhibit "B-11", Docket, p. 180.

twenty percent (20%) discounts granted to qualified senior citizens on their purchases of medicines during the period from January 1, 2003 to December 31, 2004 and overpaid income taxes less income taxes payable for 2003 and 2004 taxable years, computed as follows:[7]

TAXABLE YEAR 2003

SALES, Net		P61,498,051.83
Add: Cost of 20% Discounts to Senior Citizens		725,915.41
Sales, Gross		P62,223,967.24
Less: Cost of Sales		
Merchandise Inventory, Beginning	P 6,851,300.56	
Purchases	59,021,867.40	
Merchandise Inventory, Ending	(8,454,670.18)	57,418,497.78
GROSS PROFIT		P 4,805,469.46
Add: Other Income (Net of Interest Income Subject to Final Tax)		72,024.88
TOTAL INCOME		P 4,877,494.34
Less: Operating Expenses		3,830,876.62
NET INCOME BEFORE INCOME TAX		P 1,046,617.72
INCOME TAX (32%)		P 334,917.67
Less: Income Tax Actually Paid		(102,624.74)
Cost of 20% Discounts to Senior Citizens		(725,915.41)
INCOME TAX (REFUNDABLE/CREDITABLE)		**P (493,622.48)**

TAXABLE YEAR 2004

SALES, Net		P69,566,346.65
Add: Cost of 20% Discounts to Senior Citizens		313,091.25
Sales, Gross		P69,879,437.90
Less: Cost of Sales		
Merchandise Inventory, Beginning	P 8,454,670.18	
Purchases	65,586,899.20	
Merchandise Inventory, Ending	(9,132,602.77)	64,908,966.61
GROSS PROFIT		P 4,970,471.29
Less: Interest Income Subjected to Final Tax (Net of Other Income)		110.73
TOTAL INCOME		P 4,970,360.56
Less: Operating Expenses		4,222,437.26

[7] Par. 4, JSFI, Docket, p. 70; Exhibit "DD", Docket, pp. 213-216.

NET INCOME BEFORE INCOME TAX	P 747,923.30
INCOME TAX (32%)	P 239,335.46
Less: Income Tax Actually Paid	(139,146.26)
Cost of 20% Discounts to Senior Citizens	(313,091.25)
INCOME TAX (REFUNDABLE/CREDITABLE)	**P (212,902.05)**
TOTAL INCOME TAX (REFUNDABLE/CREDITABLE)	**P (706,524.53)**

As the two-year prescriptive period for the filing of a judicial claim for taxable year 2003 was about to expire without action on the part of respondent, petitioner filed the instant Petition for Review on April 11, 2006.[8]

In his Answer filed on May 15, 2006, respondent presented the following Special and Affirmative Defenses:[9]

> "4. Revenue Regulations No. 2-94 did not alter, modify or amend the intent of the law to consider the 20% discount granted to qualified senior citizen as deduction from petitioner's gross income and not as credit against its tax liability as petitioner insists.
>
> 5. R.A. 7432 allows the discounts granted to senior citizens to be claimed as a tax credit but is silent as to the mechanics of availing the same. For clarification and as a curative measure, Revenue Regulations No. 2-94 was issued defining the term 'tax credit' as used in the law and providing therein the manner of claiming the same, which is by deduction from the establishment's gross income and not from its income tax liability. Otherwise an absurdity, not intended by the law, will arise.
>
> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 7. The amount of P706,524.53 being claimed by petitioner as alleged sales discount to senior citizens on their purchases of medicines for taxable years 2003 and 2004 was not properly documented;
>
> 8. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain

[8] Par. 6, JSFI, Docket, p. 70.
[9] Answer, Docket, pp. 41-45.

the burden is fatal to the claim for refund/credit (**Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670**);

9. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211**)."

THE ISSUES

The parties stipulated the issues for this Court's consideration, as follows:

"a. Whether or not the claim of Petitioner for tax credit/refund was administratively and judicially filed within the two (2) – year statutory period.

b. Whether the twenty (20%) percent discount granted to qualified senior citizens on their purchases of medicines should be treated as a tax credit/refund deductible from the tax due as provided under Section 4(a) of Republic Act No. 7432 or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94.

c. (1) Whether or not the phrase 'tax deduction' under Section 4 of Republic Act No. 9257 should be applied/construed to mean as 'deduction from tax' or 'tax credit' and (2) Whether or not to hold a contrary interpretation would make said legal provision unconstitutional for being confiscatory of private property without due process of law.

d. Whether or not during the period from January 1, 2003 to December 31, 2004, Petitioner granted the twenty (20%) percent discounts to qualified senior citizens on their purchases of medicines in compliance with Republic Act No. 7432, as amended by Republic Act No. 9257 in the total amount of P1,039,006.66.

e. Whether or not Petitioner is entitled to a tax credit/refund in the amount of P706,524.53 representing the cost of the twenty (20%) percent discounts granted to qualified senior citizens on their purchases of medicines during the period from January 1, 2003 to December 31, 2004 and overpaid income taxes less income taxes payable for 2003 and 2004 taxable years."

THE COURT'S RULING

First Issue: Prescription

Sec. 228 of the National Internal Revenue Code of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the One Hundred Eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Records show petitioner filed its income tax returns for taxable years 2003 and 2004, on April 15, 2004 and April 14, 2005, respectively[10] while petitioner's administrative claim and judicial recourse by way of the instant Petition for Review were filed on March 8, 2006[11] and April 11, 2006[12], respectively. Hence, both actions were filed within the two-year prescriptive period counted from April 15, 2004 and April 14, 2005.

---

[10] Exhibits "B-9", and "P-9", Docket, pp. 178 and 196, respectively.
[11] Exhibit "DD", Docket, pp. 213-216.
[12] Docket, pp. 1-9.

Second Issue: 20% Sales Discount as Tax Credit under RA No. 7432

On the issue of whether the 20% sales discounts granted to senior citizens on their purchase of medicines should be treated as tax credit deductible from the tax due as provided under RA No. 7432 or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94, the same had already been resolved by the Supreme Court in the case of **Commissioner of Internal Revenue vs. Central Luzon Drug Corporation**[13] wherein the Supreme Court's said thus:

> "**The 20 percent discount required by law to be given to senior citizens is a *tax credit*, not merely a *tax deduction* from the gross income or gross sale of the establishment concerned.** A *tax credit* is used by a private establishment only after the tax has been computed; a *tax deduction*, before the tax is computed. RA 7432 unconditionally grants a tax credit to all covered entities. Thus, the provisions of the revenue regulation that withdraw or modify such grants are void. Basic is the rule that administrative regulations cannot amend or revoke the law."
>
> xxx xxx xxx
>
> ***Grant of Tax Credit Intended by the Legislature***
>
> Fifth, RA 7432 itself seeks to adopt measures whereby senior citizens are assisted by the community as a whole and to establish a program beneficial to them. These objectives are consonant with the constitutional policy of making 'health ... services available to all the people at affordable cost' and of giving 'priority for the needs of the ... elderly.' Sections 2.i. and 4 of RR 2-94, however, contradict these constitutional policies and statutory objectives.
>
> Furthermore, Congress has allowed all private establishments a simple *tax credit*, not a deduction. In fact, no cash outlay is required from the government for the *availment* or *use* of such credit. The deliberations on February 5, 1992 of the Bicameral Conference Committee Meeting on Social Justice,

---
[13] G.R. No. 159647, April 15, 2005 (456 SCRA 414).

which finalized RA 7432, disclose the true intent of our legislators to treat the *sales discounts* as a *tax credit*, rather than as a deduction from *gross income*. xxx." (*Emphasis supplied*)

Clearly, the 20% sales discounts granted to qualified senior citizens shall be treated as tax credits instead of deductions from gross income pursuant to Republic Act No. 7432. Moreover, the Supreme Court declared Revenue Regulations No. 2-94 as void for its failure to conform to the law it sought to implement.[14]

Third Issue : 20%Sales Discount as Tax Deduction under RA No. 9257

The third issue pertains to (a) whether or not the phrase "tax deduction" under Section 4 of Republic Act No. 9257 (Expanded Senior Citizens Law)[15] should be applied/construed to mean as "deduction from tax" or "tax credit"; and (b) whether or not a contrary interpretation of said provision would make the same unconstitutional for being confiscatory of private property without due process of law, the Supreme Court resolved these issues in the case of ***Commissioner of Internal Revenue vs. Bicolandia Drug Corporation***[16] wherein it held that the 20% sales discounts granted to senior citizens pursuant to R.A. No. 9257 shall be treated as deductions from gross income and not as tax credits, to wit:

"But even as this particular case is decided in this manner, it must be noted that the concerns of the petitioner

---

[14] *Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (Formerly known as Elmas Drug Co.*, G.R. No. 148083, July 21, 2006 (496 SCRA 176).

[15] "An Act Granting Additional Benefits and Privileges to Senior Citizens Amending for the purpose 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.'"

[16] G.R. No. 148083, July 21, 2006 (496 SCRA 176).

regarding tax credits granted to private establishments giving discounts to senior citizens have been addressed. R.A. No. 7432 has been amended by Republic Act No. 9257, the 'Expanded Senior Citizens Act of 2003.' In this, the term 'tax credit' is no longer used. The 20 percent discount granted by hotels and similar lodging establishments, restaurants and recreation centers, and in the purchase of medicines in all establishments for the exclusive use and enjoyment of senior citizens is treated in the following manner:

> 'The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: *Provided*, that the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. *Provided, further*, that the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.'

This time around, there is no conflict between the law and the implementing Revenue Regulations. Under Revenue Regulations No. 4-2006, '(o)nly the actual amount of the discount granted or a sales discount not exceeding 20% of the gross selling price can be deducted from the gross income, net of value added tax, if applicable, for income tax purposes, and from gross sales or gross receipts of the business enterprise concerned, for VAT or other percentage tax purposes. Under the new law, there is no tax credit to speak of, only deductions."

Fourth and Fifth Issues : Is Petitioner Entitled to a Tax Credit/Refund?

In his report submitted before this Court on September 6, 2006,[17] the commissioned Independent Certified Public Accountant (CPA), Mr. Rodor M. Paraiso, stated that the sales discounts given by petitioner to senior citizens for the years 2003 and 2004 wherein the required details for the issuance of cash slips were complete amounted to P1,058,963.32, broken down as follows:

---
[17] Exhibit "OO".

	Period Covered	20% Sales Discounts to Senior Citizens
a.)	January 1 - December 2003	P 727,812.06
b.)	January 1 - March 20, 2004	86,206.40
c.)	March 21 - December 31, 2004	244,944.86
		P1,058,963.32

After careful verification of related cash slips/invoices,[18] Summary of Sales Discounts to Senior Citizens,[19] Special Record Books[20], We find the commissioned Independent CPA's Report to be in order. However, the 10% Value-added Tax (VAT) in the amount of P96,269.39 should be excluded from the amount of P1,058,963.32. Thus, the resulting amount of P962,693.93 represents valid 20% sales discounts granted by petitioner to senior citizens for taxable years 2003 and 2004, computed as follows:

	Period Covered	20% Sales Discounts to Senior Citizens (net of 10% VAT)
a.)	January 1-December 2003	P 661,647.33
b.)	January 1-March 20, 2004	78,369.45
c.)	March 21-December 31, 2004	222,677.15
		P 962,693.93

As R.A. No. 9257 took effect on March 21, 2004, the 20% sales discounts granted to senior citizens after said date shall be treated as deductions from gross income instead of tax credits. Hence, petitioner cannot claim as tax credits the 20% sales discounts it granted to senior citizens for the period from March 21, 2004 to December 31, 2004 in the amount of P222,677.15; and the alleged income tax overpayment arising from the erroneous deduction thereof from its gross income cannot be allowed. mb

[18] Pre-marked as Exhibits "EE" and "II", with corresponding cash slip/invoice numbers as sub-markings, Docket, pp. 217 and 247, respectively.
[19] Exhibits "MM" and "NN", inclusive of sub-markings.
[20] Exhibit "FF", inclusive of sub-markings.

However, prior to the amendment of R.A. No. 7432 on March 21, 2004, and pursuant thereto, petitioner may still validly claim as tax credits the 20% sales discounts it granted to senior citizens for the periods of January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004, in the respective amounts of P661,647.33 and P78,369.45, or in the total sum of P740,016.78.

A scrutiny of petitioner's Cash Receipts Books,[21] Special Record Books,[22] General Ledgers,[23] income tax returns,[24] and financial statements[25] for taxable years 2003 and 2004 shows that petitioner's reported net sales for the said years included its sales to qualified senior citizens (net of the 20% sales discounts). In other words, petitioner erroneously treated the 20% sales discounts granted to senior citizens for the periods January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004 in the respective amounts of P661,647.33 and P78,369.45 as deductions from its gross income instead of as tax credits. As a result, petitioner overpaid its income taxes for the said periods.

Nevertheless, to determine petitioner's refundable amount in this case, it is necessary that We verify petitioner's actual income tax payments for 2003 and 2004 by going over its documentary evidence on record, such as the official receipts issued by authorized agent banks of the Bureau of Internal

[21] Exhibits "GG" and "KK", Docket, pp. 218 and 248, respectively, inclusive of sub-markings.
[22] Exhibits "FF" and "JJ", inclusive of sub-markings.
[23] Exhibits "HH" and "LL", Docket, pp. 243 and 273, respectively, inclusive of sub-markings.
[24] Exhibits "B" and "P", Docket, pp. 178 and 196, respectively.
[25] Exhibits "O-3" and "CC-3", Docket, pp. 195 and 210, respectively.

Revenue,[26] various Certificates of Creditable Tax Withheld at Source[27], and annual/quarterly income tax returns.[28]

A thorough examination thereof reveals that creditable VAT withheld in the amount of P298.52 was utilized by petitioner in paying off its 2003 income tax liability.[29] Since the creditable VAT withheld of P298.52 should be offset/applied against petitioner's output VAT liability and not against its income tax liability, the same shall be disallowed. Thus, out of petitioner's claimed income tax payment for 2003 in the amount of P102,624.74, We find that only the amount of P102,326.22 is properly substantiated.

With reference to petitioner's actual income tax payment for taxable year 2004 in the amount of P139,146.26[30], the same was verified and found to be duly supported by corresponding receipts and withholding tax certificates.

Looking now at petitioner's income tax liability for taxable year January 1, 2003 to December 31, 2003, it appears that petitioner actually made an overpayment of its 2003 income tax by P446,653.12, computed as follows:

Sales, Net	P61,498,051.83
Add: 20% Discounts to Senior Citizens	670,924.05[31]
Sales, Gross	P62,168,975.88
Less: Cost of Sales	57,418,497.78
Income from Operation	P 4,750,478.10

[26] Exhibits "C", "E", "G", "I", "Q", "S", "U", and "W", Docket, pp. 181, 183, 185, 187, 198, 200, 202 and 204, respectively.
[27] Exhibits "J-1", "K-1", "L-1", "M-1", "N-1", "X-1", "Y-1", "Z-1", "AA-1", and "BB-1", Docket, pp. 188, 189, 190, 191, 192, 205, 206, 207, 208 and 209, respectively.
[28] Exhibits "B", "D", "F", "H", "P", "R", "T", and "V", Docket, pp. 178, 182, 184, 186, 196, 199, 201 and 203, respectively.
[29] Exhibit "K-1", Docket, p. 189.
[30] Exhibit "P-4", Docket, p. 196.
[31]

Sales Discounts per ledger (Exhibit HH-4, Docket, p. 245)	P738,016.45
Less: 10% VAT	67,092.40
Net 20% Sales Discounts to Senior Citizens	P670,924.05

Add: Non-Operating & Other Income		72,024.88
Gross Income		P 4,822,502.98
Less: Deductions		3,830,876.62
Taxable Income		P 991,626.36
Income Tax Due (32%)		P 317,320.43
Less: Validly supported income tax payment	P102,326.22	
Validly supported sales discounts to senior citizens	661,647.33	763,973.55
Income Tax Overpayment		**P 446,653.12**

As regards petitioner's income tax overpayment for the period January 1, 2004 to March 20, 2004, We computed the same by using the formula of income tax benefit of tax credit (100%) minus income tax benefit of tax deduction (32%) equals the differential of 68% which shall be multiplied by the amount of P78,369.45, representing the 20% sales discounts granted by petitioner to senior citizens for the said period, as shown below:

Income Tax Benefit of Tax Credit	100%
Less: Income Tax Benefit of Tax Deduction	32%
Income Tax Differential	68%
Multiplied by: 20% Sales Discounts to Senior Citizens	P78,369.45
Income Tax Overpayment	**P53,291.23**

To recapitulate, the Court hereby finds that petitioner's income tax overpayment for the periods January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004 amounted to P446,653.12 and P53,291.23, respectively, or in the total sum of P499,944.35, to wit:

Period Covered		Income Tax Overpayment
January 1, 2003 to December 31, 2003		P 446,653.12
January 1, 2004 to March 20, 2004		53,291.23
	Total:	**P 499,944.35**

WHEREFORE, this instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FOUR**

HUNDRED NINETY-NINE THOUSAND NINE HUNDRED FORTY-FOUR PESOS AND 35/100 (P499,944.35), representing unused tax credits/income tax overpayment arising from the erroneous deduction from its gross income of the 20% sales discounts granted to qualified senior citizens for the periods January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice