REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TROPICAL HUT FOOD MARKET, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5312

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 28 1999

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DECISION

Before Us for consideration is petitioner's claim for refund of alleged overpaid income tax arising from its interpretation that the 20% sales discount granted to senior citizens under Republic Act (R.A.) 7432 should be treated as tax credit instead of a deduction from gross income as declared by the respondent in Revenue Regulations No. 2-94 and BIR Ruling No. 67-95, in the total amount of P377,167.00 for the years 1993 and 1994.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of retailing pharmaceutical products and selling of hamburger, beverages and other food items under the business style "TROPICAL HUT" (Exh. A). It is duly licensed by the Bureau of Food and Drugs to operate a drugstore and a fast food chain with proper permits and licenses from the local government units of the places where the drugstores and the fast food chain are located, and other government agencies (Exhs. B to F, inclusive of submarkings).

For the years 1993 and 1994, petitioner granted 20% sales discounts to qualified senior citizens on their purchases of medicines, and beverages and foods for dine-in pursuant to 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"*. Petitioner treated these discounts as a deduction from its gross income in compliance with Revenue Regulations No. 2-94 issued by the respondent which implemented the aforesaid law.

Unconvinced with the interpretation of the respondent regarding R.A. 7432, particularly Section 4(a) thereof, petitioner filed two separate claims for refund or credit. The first letter was filed on June 26, 1995, in the amount of P27,801.00 covering the year 1993 while the second letter was filed on December 20, 1995, in the amount of P349,366.00 for the year 1994 (Exhs. S and T, inclusive of sub-markings). Both claims represent alleged overpaid income tax arising from respondent's erroneous interpretation that the 20% sales discounts given to senior citizens on their purchases of medicines and food items should be treated by petitioner as a deduction from its gross income for income tax purposes or from gross sales for value-added tax or other percentage tax purposes rather than as a tax credit. In the said letter-requests for refund, petitioner treated the 20% sales discounts in complete disagreement with respondent's view, that is, as a tax credit rather than as a mere deduction.

On December 29, 1995, petitioner lodged its appeal with this Court in order to toll the running of the two-year prescriptive period to file a claim for refund pursuant to Section 230 of the Tax Code. In its petition for review, petitioner argues that the 20% sales discount granted to senior citizens should be treated as tax credit because Section

4 of R.A. 7432 provides in clear and unequivocal language that discounts granted to senior citizens may be claimed as TAX CREDIT. It further asseverates that Section 2(i) of Revenue Regulations No. 2-94 which is a mere administrative regulation, cannot modify or alter the clear mandate of said law. Petitioner believes that Section 2(i) of Revenue Regulations No. 2-94 is illegal, void and without effect for being inconsistent with the statute it seeks to implement.

On July 25, 1997, upon written motion of petitioner, respondent was declared in default due to his failure to file the answer on time despite being given a second chance to do so (see Minutes of the Session, p. 152, CTA records). A corresponding confirming resolution was then issued on August 4, 1997. Thereafter this case was heard ex-parte.

The issues to be resolved by the Court are as follows:

1. The proper interpretation of Section 4(a) of Republic Act No. 7432, insofar as the treatment of the 20% sales discount on purchase of medicines and food items afforded to senior citizens is concerned;

2. The validity of Revenue Regulations No. 2-94 implementing the aforesaid law which treats the 20% sales discounts as deduction from gross income for income tax purposes and from gross sales for value-added tax or other percentage tax purposes; and

3. Whether or not petitioner was able to prove with substantial evidence its claim for refund.

We find all the legal issues in favor of petitioner. In fact, We have already ruled on these similar issues in a number of cases (**Elmas Drug Corporation vs. Commissioner of Internal Revenue, CTA Case NO. 5311, August 27, 1998;**

Trinity Franchising & Management Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 5313, August 18, 1998; M.E. Holding Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5314, August 17, 1998; Baliuag Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5365, May 13, 1998, Del Rosario Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5357, April 6, 1998; and Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367, February 16, 1998) wherein it was held:

> After a painstaking scrutiny of the attending facts, the issues involved, the respective argumentation of the parties and the applicable jurisprudence, laws and regulations in point, this Court hereby rules in favor of the petitioner.
>
> For easy reference, the pertinent provisions of law and regulations in question are hereby reproduced, to wit:
>
> 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. . . ."(emphasis supplied)
>
> B) 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 income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes." (emphasis supplied)
>
> 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. 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. (Emphasis 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 an 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. 5357, 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 (Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, C .T .A. Case No. 5357, dated April 6, 1998, ***supra***).

We also find the conclusion in the aforequoted decision to be applicable to the petitioner's act of extending 20% sales discounts to dine-in qualified senior citizens on their purchases of food and beverage items from Tropical Hut food stores.

Having settled the legal issues 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 overpaid income taxes for the years 1993 and 1994 based on the evidence submitted during trial.

The records clearly show that the claim for refund was seasonably filed within the reglementary period of two years from the date of payment of the tax pursuant to Section 230 of the Tax Code. Petitioner also presented in evidence the cash slips showing the 20% sales discounts given to qualified senior citizens. However, out of the total sales discounts for the years 1993 and 1994 in the total amount of P573,133.82 as claimed by petitioner in its "Summary of Sales and Discounts Given to Senior Citizens", only the amount of P564,090.01(for taxable years 1993 and 1994) was verified by the independent CPA to have been supported by valid documents, to wit: (Exhs. Y, Y-1 and Y-2)

	19 93		19 94	
DRUGSTORE	Petitioner	CPA	Petitioner	CPA
Panay	P 238.87	P 238.87	P 61,141.41	P 61,141.41
Taytay	970.56	970.56	11,796.92	11,796.92
BF Homes	2,599.56	2,599.56	235,570.14	235,570.14

Novaliches	2,065.03	2,065.03	10,875.59	10,875.59
Broadway	6,069.41			
Q. Plaza	2,643.26		20,773.63	20,773.63
Malabon	1,516.93	1,516.93	42,310.21	42,310.21
Cavite	243.86	243.86	3,401.38	3,401.38
Shaw Blvd.	5,792.68	5,792.68	19,664.35	19,664.35
Sta. Quiteria	458.31	458.31	3,118.13	3,118.13
Sucat	51.70	51.70	963.15	963.15
Bagong Ilog	8,372.60	8,372.60	19,092.02	19,092.02
Bagbag			4,604.23	
JRC	7,435.05	7,435.05	5,626.23	5,626.23
Sub Total	P 38,457.82	P 32,388.41	P 438,937.39	P 434,333.16

	19 93		19 94	
COFFEE SHOP	Petitioner	CPA	Petitioner	CPA
EDSA Central	P	P	P 2,378.70	P 2,378.70
Kalentong	101.39	101.39	1,932.42	1,932.42
Cubao Romulo	692.70	692.70	7,744.65	7,744.65
Farmer's Plaza	26.80	26.80	5,355.57	5,355.57
Robinson	28.01		1,282.66	1,282.66
Broadway	491.45	491.45		
Shoppesville			5,827.37	5,827.37
Panay			8,868.03	8,868.03
Markina	43.48	43.48	3,801.86	3,801.86
Alabang	114.45	114.45	916.50	916.50
BF Homes	139.06	139.06	7,135.33	7,135.33
Buendia	558.73	558.73	4,466.18	4,466.18
Sucat	663.28	663.28	4,665.96	4,665.96
Ermita	18.04	18.04	583.24	583.24
Escolta	91.06		2,116.55	2,116.55
Carriedo	223.54	223.54	3,559.70	3,559.70
Cavite	117.48	117.48	5,105.67	5,105.67
Greenbelt	9.05		1,198.78	1,198.78
Taytay	92.74	92.74	1,444.66	1,444.66
Circle	107.01	107.01	4,802.71	4,802.71
Congressional	102.72	102.72	2,891.59	2,891.59
Monumento	92.84	92.84	2,191.10	2,191.10
Gotesco	54.73	54.73	3,481.70	3,481.70
Novaliches	7.31	7.31	1,511.86	1,511.86
Sta Quiteria	49.07	49.07	483.58	483.58
Gotesco Mall I			1,017.80	1,017.80
Gotesco Mall II			787.10	787.10
Cainta I	486.37	486.37	4,209.71	4,209.71
Cainta II			1,666.32	1,666.32
Shaw Blvd BNT				325.50
Buendia BNT				1,330.50
Pasig BNT				101.95
Sub Total	P 4,311.31	P 4,183.19	P 91,427.30	P 93,185.25
Total	P 42,769.13	P 36,571.60	P 530,364.69	P 527,518.41

Aside from the disallowances made by the independent CPA, We deemed it appropriate to exclude the following 20% sales discounts, for the following reasons:

1. The supporting cash slips were denied admission by the Court per Resolution, dated January 16, 1998 (see pp. 326 to 354, CTA records);

2. No supporting cash slips were presented but included in the "Summary of Sales and Discounts Given to Senior Citizens"(see Exhs. Y-1 and Y-2);

3. Erroneously entered twice in the summary; and

4. Overstated sales discounts.

These exclusions further reduced the 20% sales discounts to P415,923.56 for the taxable years 1993 and 1994.

Since the amount of the total sales discounts given to qualified senior citizens was further reduced from P564,090.01 to P415,923.56 as a result of this Court's own examination of the evidence presented, the total sum to be granted to petitioner has also been reduced to P270,351.41, computed as follows:

For 1993:

Net Sales		P1,225,715,359.00
Add: 20% Discount to Senior Citizens (see Annex A)		5,628.60
Gross Sales		P1,225,720,987.60
Less: Cost of Sales		
Merchandise Inventory, beg.	P 165,916,181.00	
Add Purchases	988,518,017.00	
Total Goods Available for Sales	P1,154,434,198.00	
Less: Merchandise Inventory, End	150,919,458.00	1,003,514,740.00
Gross Income		P 222,206,247.60
Less: Operating Expenses		261,678,430.00
Net Operating Loss		P 39,472,182.40
Add: Miscellaneous Income		43,466,526.00
Net Taxable Income		P 3,994,343.60
Tax Due (3,994,343.60 x 35%)		P 1,398,020 26
Less: 1) Tax Credit	P 5,628.60	
2) Income Tax Payment for the Year	1,396,051.00	1,401,679.60
AMOUNT REFUNDABLE		P 3,659.34

For 1994:

Net Sales		P1,601,304,516.00
Add: 20% Discount to Senior Citizens (see Annex B)		410,294.96
Gross Sales		P1,601,714,810.96
Less: Cost of Sales		
Merchandise Inventory, beg.	P 150,919,458.00	
Add Purchases	1,322,395,753.00	
Total Goods Available for Sales	P1,473,315,211.00	
Less: Merchandise Inventory, End	177,107,269.00	1,296,207,942.00
Gross Income		P 305,506,868.96
Less: Operating Expenses		327,011,536.00
Net Operating Loss		P 21,504,667.04
Add: Miscellaneous Income		59,142,901.00
Net Taxable Income		P 37,638,233.96
Tax Due (37,638,233.96 x 35%)		P 13,173,381.89
Less: 1) Tax Credit	P 410,294.96	
2) Income Tax Payment for the Year	13,029,779.00	13,440,073.96
AMOUNT REFUNDABLE		P 266,692.07
TOTAL AMOUNT REFUNDABLE		**P 270,351.41**

WHEREFORE, in view of the foregoing, the petition for review is partially granted. Respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the amount of P270,351.41, representing overpaid income tax for the years 1993 and 1994.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On leave)
RAMON O. DE VEYRA
Associate Judge

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

ANNEX A

1993 Valid 20% Sales Discounts to Qualified Senior Citizens

DRUGSTORE		PER CPA FINDINGS		DISALLOWANCES	REMARKS		VALID 20% DISCOUNT
Panay	P	238.87	P	238.87	Cash slips denied	P	-
Taytay		970.56		970.56	Cash slips denied		-
BF Homes		2,599.56		2,599.56	Cash slips denied		-
Novaliches		2,065.03		2,065.03	Cash slips denied		-
Q. Plaza		2,643.26		2,643.26	Cash slips denied		-
Malabon		1,516.93		1,102.63	Cash slips denied		414.30
Cavite		243.86		243.86	Cash slips denied		-
Shaw Blvd.		5,792.68		783.51	Cash slips denied		
				1,038.24	Overstated		3,970.93
Sta. Quiteria		458.31		458.31	Cash slips denied		-
Sucat		51.70		51.70	Cash slips denied		-
Bagong Ilog		8,372.60		8,372.60	Cash slips denied		-
JRC		7,435.05		7,435.05	Cash slips denied		-
Sub Total	P	32,388.41	P	28,003.18		P	4,385.23

COFFEE SHOP		PER CPA FINDINGS		DISALLOWANCES	REMARKS		VALID 20% DISCOUNT
Kalentong	P	101.39	P	39.32	Cash slips denied	P	62.07
Cubao Romulo		692.70		81.78	Overstated		
				527.59	No reference of cash slips		83.33
Farmer's Plaza		26.80		-			26.80
Broadway		491.45		491.45	Cash slips denied		-
Markina		43.48		43.48	Cash slips denied		-
Alabang		114.45		18.20	Cash slips denied		
				52.31	No reference of cash slips		43.94
BF Homes		139.06		6.99	Cash slips denied		
				116.47	No reference of cash slips		15.60
Buendia		558.73		139.65	Cash slips denied		419.08
Sucat		663.28		132.95	Cash slips denied		
				368.44	No reference of cash slips		161.89
Ermita		18.04		-	Cash slips denied		18.04
Carriedo		223.54		223.54	Cash slips denied		-
Cavite		117.48		27.54	Cash slips denied		
				5.32	No reference of cash slips		84.62
Taytay		92.74		92.74	No reference of cash slips		-
Circle		107.01		57.95	No reference of cash slips		49.06
Congressional		102.72		6.99	Cash slips denied		95.73
Monumento		92.84		-	Cash slips denied		92.84
Gotesco		54.73		20.74	Cash slips denied		33.99
Novaliches		7.31		-	Cash slips denied		7.31
Sta Quiteria		49.07		-	Cash slips denied		49.07
Cainta I		486.37		486.37	No reference of cash slips		-
Sub Total	P	4,183.19	P	2,939.82		P	1,243.37
Total						P	**5,628.60**

ANNEX B

1994 Valid 20% Sales Discounts to Qualified Senior Citizens

DRUGSTORE		FINDINGS		DISALLOWANCES	REMARKS		DISCOUNT
Panay	P	61,141.41	P	711.36	Cash slips denied	P	60,430.05
Taytay		11,796.92		-			11,796.92
BF Homes		235,570.14		7,217.21	Cash slips denied		228,352.93
Novaliches		10,875.59		-			10,875.59
Q. Plaza		20,773.63		20,773.63	No reference of cash slips		-
Malabon		42,310.21		-			42,310.21
Cavite		3,401.38		393.18	Cash slips denied		3,008.20
Shaw Blvd.		19,664.35		7,877.90	Cash slips denied		11,786.45
Sta. Quiteria		3,118.13		-			3,118.13
Sucat		963.15		-			963.15
Bagong Ilog		19,092.02		196.70	Cash slips denied		18,895.32
JRC		5,626.23		3,778.92			1,847.31
Sub Total	P	434,333.16		40,948.90		P	393,384.26

COFFEE SHOP		PER CPA FINDINGS		DISALLOWANCES	REMARKS		VALID 20% DISCOUNT
EDSA Central	P	2,378.70	P	59.10	Cash slips denied		
				1,825.37	No reference of cash slips		494.23
Kalentong		1,932.42		11.00	Cash slips denied		
				1,869.14	No reference of cash slips		52.28
Cubao Romulo		7,744.65		337.43	Cash slips denied		
				4,360.24	No reference of cash slips		
				31.51	Entered twice		3,015.47
Farmer's Plaza		5,355.57		7.20	Cash slips denied		
				4,452.82	No reference of cash slips		895.55
Robinson		1,282.66		18.68	Cash slips denied		
				1,020.81	No reference of cash slips		
				147.88	Entered twice		95.29
Shoppesville		5,827.37		51.75	Cash slips denied		
				5,566.82	No reference of cash slips		208.80
Panay		8,868.03		474.56	Cash slips denied		
				7,011.53	No reference of cash slips		1,381.94
Markina		3,801.86		4.15	Cash slips denied		
				3,190.17	No reference of cash slips		
				15.29	Entered twice		592.25
Alabang		916.50		916.50	Cash slips denied		-
BF Homes		7,135.33		6,280.03	No reference of cash slips		855.30
Buendia		4,466.18		128.02	Cash slips denied		
				4,266.67	No reference of cash slips		71.49
Sucat		4,665.96		5.80	Cash slips denied		
				4,650.84	No reference of cash slips		9.32
Ermita		583.24		583.24	Cash slips denied		-
Escolta		2,116.55		2,102.40	Cash slips denied		14.15
Carriedo		3,559.70		2,743.13	Cash slips denied		816.57
Cavite		5,105.67		5,105.67	Cash slips denied		-
Greenbelt		1,198.78		8.19	Cash slips denied		
				1,181.60	No reference of cash slips		8.99
Taytay		1,444.66		15.30	Cash slips denied		
				860.96	No reference of cash slips		568.40

Circle		4,802.71		74.04	Cash slips denied		
				2,257.85	No reference of cash slips		
				91.93	Entered twice		2,378.89
Congressional		2,891.59		187.96	Cash slips denied		
				2,219.33	No reference of cash slips		484.30
Monumento		2,191.10		55.11	Cash slips denied		
				1,358.79	No reference of cash slips		
				7.19	Entered twice		770.01
Gotesco		3,481.70		10.95	Cash slips denied		
				2,819.16	No reference of cash slips		651.59
Novaliches		1,511.86		38.72	Cash slips denied		
				1,137.53	No reference of cash slips		335.61
Sta Quiteria		483.58		10.72	Cash slips denied		
				291.84	No reference of cash slips		181.02
Gotesco Mall I		1,017.80		79.24	Cash slips denied		
				382.10	No reference of cash slips		
				13.98	Entered twice		542.48
Gotesco Mall II		787.10		14.40	Cash slips denied		
				473.78	No reference of cash slips		298.92
Cainta I		4,209.71		506.57	Cash slips denied		
				1,961.72	No reference of cash slips		
				11.60	Entered twice		1,729.82
Cainta II		1,666.32		14.00	Cash slips denied		
				1,187.50	No reference of cash slips		
				6.79	Entered twice		458.03
Shaw Blvd BNT		325.50		325.50	No reference of cash slips		-
Buendia BNT		1,330.50		1,330.50	No reference of cash slips		-
Pasig BNT		101.95		101.95	No reference of cash slips		-
Sub Total	P	93,185.25	P	76,274.55		P	16,910.70
Total						P	410,294.96