REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SOUTHERN LUZON DRUG CORPORATION, Petitioner,	**C.T.A. CASE NO. 7608**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 11 2009; 11:00am

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DECISION

BAUTISTA, *J.*:

The instant Petition for Review seeks the issuance of tax credit certificate in the amount of P3,175,980.00, representing unused tax credits earned for the period covering January 1, 2004 to March 20, 2004, arising from the twenty percent (20%) sales discounts petitioner granted to senior citizens on their purchases of medicines, pursuant to Republic Act No. 7432.

Southern Luzon Drug Corporation (Petitioner) is a domestic corporation organized and existing under the laws of the Philippines, with principal office address at No. 7 Mercury Avenue, Bagumbayan, Quezon City. It is duly licensed to operate drug stores by the Bureau of Food and Drugs (BFAD), the Department of Trade and Industry (DTI), the Bureau of Internal Revenue (BIR), and the local government units where the drugstores are located.[1]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

In 2004, petitioner operated twelve (12) drug stores located in San Pablo Ultimart; Batangas Caedo; Bauan Kapitan Ponso; Lopes GV Vera; Nasugbu JP Laurel; Puerto Princesa Malvar; Pinamalayan Mabini; Palawan Valencia; Palawan Rizal; Robinson's Place Lipa; Lucena Red V; and Palawan Malvar San Juan.[2]

On various dates, during the period from January 1, 2004 to March 20, 2004, petitioner allegedly granted 20% sales discount in the amount of P3,175,980.00 to qualified senior citizens on their purchases of medicines from petitioner, pursuant to Republic Act (R.A.) No. 7432[3] or the "Senior Citizens Act" and its Implementing Rules and Regulations.

In its 2004 Annual Income Tax Return[4] filed on April 15, 2005, petitioner reported and treated the said discount of P3,175,980.00 as prepaid tax credit[5] by declaring it as creditable tax withheld for the first three quarters.[6]

On April 14, 2007, petitioner filed with respondent a request[7] for the issuance of tax credit certificate in the amount of P3,175,980.00, equivalent to the 20% sales discounts purportedly granted by petitioner to qualified senior citizens for the period from January 1, 2004 to March 20, 2004, pursuant to Republic Act No. 7432.

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[1] Pars. 1 and 3, Joint Stipulation of Facts, docket, p. 52.
[2] Par. 2, Joint Stipulation of Facts, docket, p. 52
[3] "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and special Privileges and for Other Purposes"
[4] Exhibits "C" and "C-1"
[5] Par. 4, Joint Stipulation of Facts, docket, p. 52
[6] Exhibit "C", line 27C
[7] Exhibits "E", "E-1", and "E-2"

In order to comply with the two-year prescriptive period for filing claims for refund or issuance of tax credit certificate, petitioner filed the present Petition for Review on April 16, 2007[8].

In his Answer[9] filed on July 1, 2007, respondent interposed the following Special and Affirmative Defenses:

> "6. The claim for refund is still under examination by the respondent's Bureau;
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> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
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> 8. The grant of a claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
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> 9. The power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate must be strictly construed and the same must be couched in clear and unmistakable terms in order that it may be applied. (Floro Cement Corporation vs. Gorospe, G.R. No. 46787, Aug. 2, 1991).
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> 10. The instant petition for review was filed with this Honorable Court without the mandatory Resolution of the petitioner's Board of Directors authorizing the filing of the instant petition. Therefore, the instant petition was filed without the substantial compliance with the required certification of non-forum shopping per Sec. 5, Rule 7 of the New Rules of Civil Procedure, as amended."

After trial on the merits, this case was submitted for decision on November 27, 2008, taking into consideration petitioner's Memorandum filed on October 27, 2008, sans respondent's Memorandum.

The parties submitted the following jointly stipulated issues[10] for this Court's resolution:

> "1. Whether or not Petitioner's claim for refund or tax credit is substantiated by documentary evidence.

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[8] April 15, 2007 was a Sunday
[9] Docket, p. 39
[10] Docket, p. 53

2. Whether or not Petitioner actually granted and is entitled to the issuance of a tax credit certificate in the total amount of P3,175,980.00 sales representing the discounts it granted to senior citizens on their purchases of medicines from January 1, 2004 to March 20, 2004."

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to the grant of tax credit certificate in the amount of P3,175,980.00, representing the 20% sales discount granted to senior citizens on their purchase of medicines from January 1, 2004 to March 20, 2004, pursuant to R.A. No. 7432."

Before the Court proceeds to the main issue, the Court reckons it proper to address first the allegation of respondent that the instant Petition for Review was filed without the required certification of non-forum shopping, in violation of Section 5, Rule 7 of the New Rules of Civil Procedure.

A perusal of the records reveals that there exists a Secretary's Certificate [11] authorizing Mr. Jacinto J. Concepcion through Resolution No. 07-04 "to sign the Verification and Certification that may be required in any and all the pleadings to be submitted in connection with the said Appeal/Petition" with this Court. Per inspection of the instant Petition for Review, the same Mr. Jacinto J. Concepcion signed petitioner's "Verification and Certification".[12] Clearly, the instant Petition was filed in accordance with the 1997 Rules of Civil Procedure; hence, not dismissible.

This Court will now proceed to resolve the main issue.

The pertinent law indicating the proper treatment of the 20% sales discount to qualified senior citizens on their purchases of medicine is Section 4(a) of R.A. No. 7432, which states:

> "**SECTION 4.** *Privileges for the Senior Citizens.* – The senior citizens shall be entitled to the following:

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[11] Docket, p. 32.
[12] Docket, p. 6.

> 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**;" (*Emphasis supplied*)

It is clear from the afore-quoted provision that private establishments, like herein petitioner, may claim the cost of granting 20% discount to qualified senior citizens as tax credit.

This Court has also consistently held that the 20% sales discount granted to qualified senior citizens should be treated as tax credit and not as mere deductions from gross income.[13]

In **Commissioner of Internal Revenue vs. Central Luzon Drug Corporation**[14], the Supreme Court confirmed this Court's interpretation of the provision of R.A. No. 7432, in this wise:

> "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 grant are void. Basic is the rule that administrative regulations cannot amend or revoke the law." *(Emphasis supplied)*

In order to prove that it actually granted 20% sales discounts to qualified senior citizens, petitioner presented its Summary of Sales for 2004[15], Summary of Sales Discount Granted to Senior for Citizens for 2004[16], Sample Form 153 or Daily Cash, Accounting Receivable and Sales Report of Petitioner filed by its MDC-San Pablo Ultimart Branch on January 1, 2004[17], Cashier's Report filed by petitioner's MDC-San Pablo Ultimart Branch on

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[13] Baliuag Drug Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 6537, November 25, 2004, quoting the Decision of the CTA in the case of Del Rosario Drug Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5357, April 6, 1998
[14] G.R. No. 159647, April 15, 2005
[15] Exhibit "R"
[16] Exhibits "S" and "S-1"
[17] Exhibit "U"

January 1, 2004[18], Daily Sales of Senior Citizens on January 1, 2004[19], Z Totalizer of all MDC-San Pablo Ultimart Branch's cash register machine on January 1, 2004[20], cash slips evidencing the purchases of medicines by senior citizens for 2004[21], and sample BIR and BFAD Special Record Books for 2004[22].

The Court-commissioned Independent Certified Public Accountant (CPA) in his final Report[23] dated March 5, 2008, certified that the amount of P2,871,870.56 represents 20% sales discounts given by petitioner to qualified senior citizens for the period January 1, 2004 to March 20, 2004, broken down as follows:

BRANCH	Amount Per Book	Amount Per Audit	Variance
Puerto Princesa Valencia	75,628.87	169,663.33	(94,034.46)
San Pablo Ultimart	604,577.46	604,528.72	48.74
Puerto Princesa Rizal	6,984.04	4,828.44	2,155.60
Caedo Commercial Batangas	888,323.28	934,201.01	(45,877.73)
Bauan Capitan Ponso	470,833.54	471,180.65	(347.11)
Lopez GV Vera	109,605.67	107,171.16	2,434.51
Nasugbu JP Laurel	151,567.75	150,872.79	694.96
Puerto Princesa Malvar	18,718.18	18,068.73	649.45
Pinamanlayan Mabini	151,212.42	149,543.17	1,669.25
Robinsons Place Lipa	280,947.98	64,440.45	216,507.53
Lucena Red - V	187,708.88	197,372.11	(9,663.23)
Total	**2,946,108.07**	**2,871,870.56**	**74,237.51**

Moreover, the Independent Auditor attached thereto a summary[24] wherein the 20% sales discounts to senior citizens were properly itemized based on the auditing firm's verification of the cash slips issued by each of petitioner's branches and were compared against those that are reflected in petitioner's Special Record Books.

This Court finds the said Report to be in order.

However, after comparing the amounts of 20% sales discount to senior citizens per books or as claimed by petitioner and as audited by the Independent CPA, this Court found

[18] Exhibit "U-1" and "U-2"
[19] Exhibit "U-3"
[20] Exhibits "U-4" to "U-8"
[21] Exhibit "Y" (Including submarkings)
[22] Exhibit "Z"
[23] Exhibit "AA"
[24] Exhibit "AA", Annex "C"

out that there were instances when the amount per books exceeded the audited amounts or vice-versa.

To illustrate, for the period from January 1, 2004 to March 20, 2004, in the Summary of Sales Discount Given to Senior Citizens, the amount per book for Puerto Princesa Valencia was P75,628.87; while the corresponding audited amount was P169,663.33. Clearly, there was a discrepancy. This Court however will only consider the amount per book of P75,628.87 as basis for computing petitioner's refundable amount. After all, elementary is the rule that a taxpayer cannot claim beyond what is prayed for in the Petition for Review.

On the other hand, if the amount per books or the claimed amount is higher than the audited amount, the latter shall be used in determining petitioner's refundable amount since this amount is the one that is duly substantiated.

Based on the foregoing rule, the Court arrived at the amount of P2,721,948.03, computed as follows:

Branch	Amount Per Book	Amount Per Audit	Should-Be Basis of Refundable Amount
Puerto Princesa Valencia	75,628.87	169,663.33	75,628.87
San Pablo Ultitimart	604,577.46	604,528.72	604,528.72
Puerto Princesa Rizal	6,984.04	4,828.44	4,828.44
Caedo Commercial Batangas	888,323.28	934,201.01	888,323.28
Bauan Capitan Ponso	470,833.54	471,180.65	470,833.54
Lopez GV Vera	109,605.67	107,171.16	107,171.16
Nasugbu JP Laurel	151,567.75	150,872.79	150,872.79
Puerto Princesa Malvar	18,718.18	18,068.73	18,068.73
Pinamanlayan Mabini	151,212.42	149,543.17	149,543.17
Robinsons Place Lipa	280,947.98	64,440.45	64,440.45
Lucena Red - V	187,708.88	197,372.11	187,708.88
Total	**2,946,108.07**	**2,871,870.56**	**2,721,948.03**

Petitioner's substantiated claim in the amount of P2,721,948.03 is however still inclusive of value-added tax (VAT). Hence, it is but proper to exclude the 10% VAT or the amount of P247,449.82 from the amount of claim; and the resulting amount of P2,474,498.21 may be claimed as tax credit by petitioner.

In order to validly claim the amount of P2,474,498.21 as tax credit, petitioner must also establish that the related gross sales to senior citizens (inclusive of the 20% sales discount) were declared as part of its taxable income.

For taxable year 2004, petitioner reported in its Annual Income Tax Return as sales the amount of P414,417,006.00.[25] The same was likewise reflected in its Audited Financial Statements for the same taxable year.[26] The said sales included the gross sales to senior citizens related to the claimed 20% sales discount of P2,474,498.21 as found in petitioner's Cash Receipts and Sales Book[27], and its General Ledger.[28]

Evidently, the gross sales to senior citizens corresponding to the claimed 20% sales discount of P2,474,498.21 formed part of petitioner's taxable income for 2004.

Records show that petitioner had an income tax liability for 2004 in the amount of P23,964.84 and that petitioner failed to substantiate its prior year's excess credits of P25,108,016.47. Consequently, the claimed 20% sales discounts of P2,474,498.21 shall be partially applied against the income tax due of P23,964.84, computed as follows:

Gross Income		P	1,198,242.00
Less:	Deductions		18,676,757.00
Taxable Income		P	(17,478,515.00)
Minimum Corporate Income Tax (MCIT) Due		P	23,964.84
Less:	Tax Credits		
	20% Sales Discounts Granted		
	to Senior Citizens		2,474,498.21
Excess Tax Credits		**P**	**2,450,533.37**

In sum, petitioner's unused tax credits arising from the 20% sales discount it granted to senior citizens for taxable year 2004 amounted only to P2,450,533.37.

[25] Exhibit "C"
[26] Exhibit "D"
[27] Exhibit "W"
[28] Exhibit "V"

WHEREFORE, premises considered, the 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 TWO MILLION FOUR HUNDRED FIFTY THOUSAND FIVE HUNDRED THIRTY-THREE PESOS AND 37/100 (P2,450,533.37)**, representing unused tax credits earned for taxable year 2004, arising from the 20% sales discounts it granted to senior citizens on their purchases of medicines pursuant to Republic Act No. 7432.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division