Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

NORTHERN LUZON DRUG CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6667

Members:

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

Promulgated:

OCT 19 2005

x -x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This is a claim for the issuance of a tax credit certificate in the amount of Five Million One Hundred Thirty Four Thousand Two Hundred Sixteen Pesos and 17/100 (P5,134,216.17) arising from the alleged erroneous treatment of the 20% sales discounts granted to qualified senior citizens on their purchases of medicines for the taxable year 2000. The sales discount was treated merely as a deduction from gross income as prescribed by Revenue Regulations No. 2-94 instead of as a tax credit as provided for in Republic Act No. 7432 *(Senior Citizens Act).*

THE FACTS

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal office address at No. 28 Shaw Boulevard, Pasig City. It is engaged in the retailing of medicines and other pharmaceutical products. It is duly authorized to operate as a drugstore under the name and business style of "Mercury Drug" by the Bureau of Food and Drugs, Department of Trade and Industry, the Bureau of Internal Revenue and the respective municipalities where its drug stores are located. In 2000, it operated nine (9) drug stores located at Baguio; Bangued, Abra; Batac Washington; Candon National Highway; San Fernando, La Union; La Trinidad, Tayug, Quezon.

Petitioner granted 20% sales discount on medicines sold to qualified senior citizens in compliance with Republic Act (R.A.) No. 7432, otherwise known as the Senior Citizens Act. And for the period January to December 2000, the sales discounts granted to qualified senior citizens amounted to P5,134,216.17.

On April 17, 2001, petitioner filed its 2000 corporate income tax return[1] declaring the following information:

---

[1] Exhibit C

306

Sales	P319,464,099.00
Less: Cost of Sales	289,383,791.00
Gross Income from Operation	P 30,080,308.00
Add: Non-Operating & Other Income	231,823.00
Total Gross Income	P 30,312,131.00
Less: Deductions	26,401,759.00
Taxable Income	P 3,910,372.00
Tax Rate	32%
Income Tax Due	P 1,223,628.00
Less: Tax Credits/Payments	
Prior Year's Excess Credit	P 1,393,893.00
Creditable Tax Withheld	148.00
Tax Credits – OSCA	***5,134,215.00***
Total Tax Credits/Payments	P 6,528,256.00
Overpayment	(P5,304,628.00)

Petitioner contends that Section 2(i) of Revenue Regulations No. 2-94 (treating the 20% sales discounts granted to qualified senior citizens as a tax deduction from gross sales) is illegal and void inasmuch as Section 4 of R.A. No. 7432 unequivocally provides that the 20% sales discounts can be claimed as a tax credit. Hence, on April 14, 2003, it filed a request for the issuance of a tax credit certificate with the Bureau of Internal Revenue. And this instant Petition for Review was also filed on April 14, 2003.

THE ISSUES

The Court is tasked to resolve the following:

1. Whether the 20% sales discount granted to senior citizens on their purchase of medicines should be treated as a tax credit deductible from the tax due as provided under R.A. No. 7432 or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94.

307

2. Whether or not petitioner actually granted a total amount of P5,134,216.17 sales discounts to qualified senior citizens on their purchases of medicines in the year 2000.

3. Whether or not petitioner is entitled to the claimed amount of P5,134,216.17 for the taxable year ended 2000.

THIS COURT'S RULING

This is not a case of first impression. In numerous cases the Court already ruled that the 20% sales discount should be treated as tax credit and not as mere deduction from gross income.

For reference, the particular provisions of the law and regulation relied upon by the parties are hereunder reproduced:

Sec. 4, 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)*

Section 2(i), 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 centers, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, **which discount shall be deducted by the said**

establishments from their gross sales for value-added tax or other percentage tax purposes." *(emphasis supplied)*

In ***Central Luzon Drug vs. Commissioner of Internal Revenue***[2], the Court elucidated, viz: "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. Its promulgation must be authorized by the legislature.[3] Revenue Regulations 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 the phrase tax credit:

> 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.**[4] *(Emphasis Ours)*

---

[2] C.T.A. CASE NO. 5582, April 24, 2000 and citing several cases
[3] Tayug Rural Bank vs. Central Bank of the Philippines, 146 SCRA 120
[4] Black's Law Dictionary, 6th ed., P. 1461

309

Respondent's interpretation that a tax credit is synonymous to a tax deduction is in glaring contradiction to the above definition. In fact, the Supreme Court, in the case of ***Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, G.R. No. 159647, April 15, 2005,*** clearly explained the distinction between a tax credit and a tax deduction. To quote:

> "A *tax credit* differs from a *tax deduction*. On one hand, a *tax credit* reduces the tax due, including – whenever applicable – the *income tax* that is determined after the applying the corresponding tax rates to *taxable income*. A *tax deduction*, on the other, reduces the income that is subject to tax in order to arrive at *taxable income*. To think of the former as the latter is to avoid, if not entirely confuse, the issue. A *tax credit* is used only *after* the tax has been computed; a *tax deduction, before*."

Under these circumstances, the law should reign supreme over subordinate rules and regulations. It is clearly provided in Section 4(a) of R.A. No. 7432 that the cost of the 20% discount granted by private establishments may be claimed by the latter as a tax credit and not as a mere deduction. And in case of conflict between a statute and an administrative order, the former must prevail.[5]

The Supreme Court further settled the issue when it declared in the same case of ***Commissioner of Internal Revenue vs. Central Luzon Drug Corporation***[6] that:

> *"The 20 percent discount required by the 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*

---

[5] Kilusang Mayo Uno Labor Center vs. Garcia, Jr., 239 SCRA 386
[6] *supra*

310

regulation that withdraw or modify such grant are void. Basic is the rule that administrative regulations cannot amend or revoke the law."

In view thereof, petitioner appears to be entitled to the refund of the amount sought for. However, upon examination of petitioner's annual income tax return for the succeeding taxable year 2001[7] it was revealed that the amount of P5,304,628.00 representing petitioner's 2000 excess tax credits, was carried-over to taxable year 2001. Moreover, it was utilized to offset petitioner's tax liability for the year 2001 amounting to P1,768,557.00 and the balance thereof formed part of petitioner's total overpayment for the said year in the sum of P12,009,179.00 which petitioner opted to be carried over to the succeeding taxable year 2002. To illustrate:

Sales	P420,246,218.00
Less: Cost of Sales	380,681,032.00
Gross Income from Operation	P 39,565,186.00
Add: Non-Operating & Other Income	898,626.00
Total Gross Income	P 40,463,812.00
Less: Deductions	39,937,071.00
Taxable Income	P 5,526,741.00
Tax Rate	32%
Income Tax Due	P 1,768,557.00
Less: Tax Credits/Payments	
Prior Year's Excess Credit	**P 5,304,628.00**
Creditable Tax Withheld (1st-3rd qtrs)	6,025,928.00
Creditable Tax Withheld (4th qtr)	**2,447,180.00**
Total Tax Credits/Payments	P 13,777,736.00
Overpayment	(P 12,009,179.00)

[7] Annex " A", Petition for Review, Northern Luzon Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6940

311

Clearly, petitioner's claim must fail. It cannot claim for a refund of P5,134,216.17 (tax credits – OSCA)[8] while at the same time carry over the same amount to the succeeding taxable year 2001 and in fact partly used it to pay for its income tax due for the said period and the balance thereof still be carried over to the taxable year 2002. Petitioner as claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund. Tax refunds, like exemptions, are construed strictly against the taxpayer.[9]

IN VIEW OF THE FOREGOING, the Petition for Review is hereby **DISMISSED.**

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

Olga Palanca Enriquez
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman

---

[8] Exhibit C
[9] Citibank, N.A. vs. Court of Appeals, & Commissioner of Internal Revenue, 280 SCRA 459

312