REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STO. ROSARIO DRUG CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 5367**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 16 1998

x - x

DECISION

Before Us is a claim for refund of alleged overpaid income tax for 1993 in the amount of P15,923.00 arising from petitioner's interpretation of 20% sales discounts granted to senior citizens on their purchases of medicines as tax credit under the provisions of Republic Act 7432.

The facts of the case are simple.

Petitioner is a domestic corporation duly organized and existing by virtue of the laws of the Philippines. It is engaged in the operation of a drugstore in Cabanatuan City under the name and business style of MERCURY DRUG and is duly licensed by the Bureau of Food and Drugs, with proper permits and licenses from local government units and other government agencies.

Since the enactment of 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" and pursuant to the provisions of Revenue Regulations No. 2-94, petitioner granted on various dates from January 1993 to December 1994, 20% sales discounts to qualified senior citizens on their purchases of medicines.

In protest to the alleged erroneous treatment of the said sales discounts under Revenue Regulations No. 2-94, petitioner sent a letter, dated April 15, 1994 (Exhibit "H"), to the respondent contending that the provisions of Section 4(a) of R.A. 7432 provides that private establishments may claim the cost as tax credit.

Subsequently, petitioner filed a claim for refund or credit, dated March 30, 1995, of overpaid income tax for the taxable year 1993 in the total amount of P15,923.00 computed as follows:

SALES, Net		P53,175,598.00
ADD: Cost of 20% Discount to Senior Citizen		24,497.00
SALES, Gross		P53,200,095.00
COST OF SALES:		
Merchandise Inventory, beg.	P 4,998,265.00	
Purchases	49,016,920.00	
Merchandise Inventory, end	(5,286,063.00)	48,729,122.00
GROSS PROFIT		P 4,470,973.00
Miscellaneous Income		161,765.00
TOTAL INCOME		P 4,632,738.00
Operating expenses		(4,285,021.00)
NET INCOME BEFORE INCOME TAX		P 347,717.00
INCOME TAX PAYABLE		P 105,635.00
Less: Tax Credit (Cost of 20% Discount to Senior Citizens)	P 24,497.00	
Tax Actually paid	97,061.00	(121,558.00)
TAX REFUNDABLE		(P 15,923.00)

To support its claim, petitioner formally offered the following documentary evidence:

1. SEC Registration Certificate (Exh. "A");
2. 1993 License to do business (Exh. "B");
3. 1993 Corporate Residence Tax Certificate (Exh. "C");
4. Summary of Sales Discounts granted by petitioner to Senior Citizens in 1993 (Exh. "F");
5. Income Tax Return for 1993 (Exh. "G");
6. Protest letter dated April 15, 1994 (Exh. "H"); and
7. Claim for Refund dated March 30, 1995 (Exh. "I").

Considering that the two-year prescriptive period under Section 230 of the Tax Code is about to expire, petitioner filed the instant petition before Us on April 15, 1996.

The case at bar focuses on the proper interpretation of Section 4(a) of Republic Act No. 7432, particularly on the treatment of the 20% sales discount on purchase of medicine afforded to senior citizens and the validity of Revenue Regulations No. 2-94 insofar as it conforms to the provision of the said law. To be specific, We are tasked to resolve the issue of whether or not the sales discounts should be deductible from gross income for income tax purposes and from gross sales for value-added tax or other percentage tax purposes as prescribed under

Revenue Regulations No. 2-94; or as a tax credit deductible from the taxes due on petitioner.

Petitioner asseverates that Section 4 of R.A. 7432 provides in clear and unequivocal language that discounts granted to senior citizens may be claimed as tax credit and that Revenue Regulations No. 2-94 which is a mere implementing administrative regulation cannot modify, alter or depart from the clear mandate of Sec. 4 of R.A. 7432, thus, it is null and void for being inconsistent with the very statute it seeks to implement.

Respondent for her part submits that Revenue Regulations No. 2-94 did not alter, modify or amend the intent of the law to consider/treat the 20% discount granted to qualified senior citizens as deductible cost against petitioner's gross income and not against its income tax liability as petitioner insists. She claims that her construction of the term "tax credit" is still within the ambit of her power of subordinate legislation which is entitled to great respect and should be accorded great weight by the courts.

After a thorough and careful analysis of all the arguments adduced by both parties with respect to the legal basis of the claim for refund, this Court is inclined to rule for the petitioner.

For clarity, quoted hereunder are the provisions of law and regulations apropos to the instant case:

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 establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: *Provided*, That private establishments may claim the cost as tax credit. (underscoring supplied)

B) 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 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 and other percentage tax purposes." (underscoring supplied).

The provision of Section 4 of R. A. 7432 is crystal clear - the 20% discounts granted to qualified senior citizens may be claimed as **tax credit**. And as a settled rule of statutory construction, when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says ***(Marin vs. Nacianceno, 19 Phil. 238).*** Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them ***(People vs. Mapa, G.R. No. L-22301, August 30, 1967).***

It is true that the respondent has the power of subordinate legislation effected by her issuance of implementing rules and regulations such as Revenue

Regulations No. 2-94 in the case at bar, but the said power is not without limit. The administrative regulation must not be in sharp conflict with the governing statute it seeks to implement ***(Nestle Philippines, Inc. vs. Court of Appeals, et al, 203 SCRA 504)***. Revenue Regulations No. 2-94 gave a new meaning to the phrase "tax credit", interpreting it to mean that the 20% discount granted to qualified senior citizens is an amount deductible from the establishment's gross sales, which is completely contradictory to the literal or widely accepted meaning of the said phrase, as an amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability ***(Black's Law Dictionary).***

A research made on the deliberations of the Bicameral Conference Committee with respect to the contents of Republic Act 7432 clearly shows that the real intent of the lawmakers was to treat these discounts as a tax credit rather than as a deduction as interpreted by the respondent.

In view of such apparent discrepancy in the interpretation of the term "tax credit", the provisions of the law under R.A. 7432 should prevail over the subordinate regulation issued by respondent under Revenue Regulations No. 2-94.

Having settled the legal issue involved in the case at bar, We are now tasked to resolve the factual issue of whether or not petitioner is entitled to its claim for refund/credit of its overpaid income taxes for 1993 based on petitioner's evidence at hand.

A cursory examination of all the evidence presented by the petitioner led this Court to conclude that petitioner failed to fully substantiate its claim for tax refund/credit, and therefore, not entitled to the tax refund/credit sought due to insufficiency of evidence.

We find that petitioner did not submit the copies of the "cash slips" as indicated in its Summary of Discounts Given to Senior Citizens (Exhibit "F-2" to "F-11") offered by the petitioner, thus preventing Us from confirming the veracity of the amount it claims for refund/credit. Petitioner inadvertently assumed that a mere listing of cash slips even if certified to have been previously examined by an independent Certified Public Accountant would suffice to establish the truthfulness and accuracy of the contents thereof.

CTA Circular 10-97 amending the provisions of CTA Circular 1-95 clearly provides that:

> "2. The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. <u>It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payments to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court</u> in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. x x x."

The foregoing provisions of Circular 10-97 does not permit the petitioner to present a CPA Certification and Summary Listings Documents alone without submitting the voluminous photocopies of the cash slips before Us. The said

Circular merely aims to avoid the time-consuming procedure of presenting, identifying and marking each document before this Court or Commissioned Clerk of Court, thus, encouraging speedy administration of justice.

WHEREFORE, in view of all the foregoing, petitioner's claim for issuance of tax credit certificate or refund is hereby **DENIED** due to insufficiency of evidence. No pronouncements as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

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
Court of Tax Appeals