REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TROPICAL HUT FOOD MARKET, INC.,
Petitioner,

C.T.A. CASE NO. 6674

Members:

- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 26 2006

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DECISION

ACOSTA, E., PJ.:

Is petitioner entitled to a judgment granting it a tax credit or refund of overpaid corporate income tax in the amount of THREE MILLION THREE HUNDRED FIVE THOUSAND ONE HUNDRED FIFTY PESOS AND FOUR CENTAVOS (₱3,305,150.04) for the taxable year 2000?

Petitioner is seeking for a relief from this Court and is praying for a tax refund or credit in the amount of ₱3,305,150.04 allegedly representing its unused tax credits earned for the taxable year 2000 arising from the 20% sales discounts it granted to senior citizens on their purchases of medicines as provided for in Republic Act (R.A.) No. 7432.[1]

The facts of the case are simple and undisputed:

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal office address at No. 163 E. Delos Santos Avenue, Mandaluyong City.

Petitioner operates as a retailer of medicines and other pharmaceutical products and fast food stores/coffee shops that sell hamburgers, beverage and other food items under the name and style of "Tropical Hut"; and its drugstores and fast food stores are duly licensed to operate by the Bureau of Food and Drugs and the local government units where the drug stores and fast food stores/coffee shops are located.

On various dates during the period from January to December 2000, petitioner granted twenty percent (20%) sales discounts to qualified senior citizens on their purchases of medicines from drugstores, hamburgers, beverage, other food items from its fast food stores in compliance with R.A. No. 7432 and its Implementing Rules and Regulations.

On April 16, 2001, petitioner filed its annual income tax return for the year 2000[2] and the accompanying Audited Financial Statements with the Bureau of Internal Revenue's authorized agent bank.[3]

On April 14, 2003, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of ₱3,305,150.04. The very next day, April 15, 2003, so as to toll the running of the prescriptive period within which to file a judicial claim, petitioner filed this Petition for Review.

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1 "An Act To Maximize the Constribution Of Senior Citizens To Nation Building, Grant Benefits And Special Privileges And For Other Purposes".
2 Exhibit F.
3 Exhibit E.

Submitted for this Court's resolution are the following issues:

1. Whether the 20% sales discount granted to senior citizens on their purchase of medicines should be treated as 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;

2. Whether or not petitioner actually granted a total amount of ₱3,305,150.04 sales representing the discounts it granted to senior citizens on their purchases of medicines in the year 2000; and

3. Whether or not the petitioner is entitled to be granted its alleged tax credit in the amount of ₱3,305,150.04 for the taxable year ended 2000.

Petitioner argues that it is jurisprudentially settled that the 20% discounts granted to senior citizens under Section 4 of R.A. No. 7432 can be claimed by private establishments as a tax credit and not merely as a tax deduction; the 20% sales discount granted by petitioner to qualified senior citizens amounting to ₱3,305,150.04 is properly substantiated by evidence; and the act of petitioner in treating the 20% discounts it granted to senior citizens as pre-paid income tax is justified.

Respondent, on the other hand, counters that the correct interpretation and enforcement of the provisions on tax credits of R.A. No. 7432 is to treat the discounts granted to senior citizens as deductions from gross income for income tax purposes or from gross sales for value-added tax or other percentage tax purposes.

As correctly pointed out by petitioner, the first issue has already been resolved by the Supreme Court in *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*[4] wherein it declared that:

> "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

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[4] 456 SCRA 414 [2005].

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

"Furthermore, Congress has allowed all private establishment 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, 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. (Underlining supplied)

Clearly therefore, the 20% sales discounts granted to qualified senior citizens shall be treated as a tax credit, instead of a deduction, from gross income pursuant to R.A. No. 7432.

To prove that it actually granted 20% sales discounts to qualified senior citizens in the amount of P3,305,150.04 for the taxable year 2000, petitioner submitted various cash slips which were verified by the Court commissioned independent CPA, Mr. Alfonso P. Katigbac.[5] However, based from Mr. Katigbac's reports dated February 14, 2004 and January 14, 2005, only the amount of ₱2,283,205.60 was properly substantiated by cash slips out of petitioner's total claim of ₱3,305,150.04 representing 20% sales discounts given to senior citizens for taxable year 2000, as illustrated below.[6]

	Per CPA Report Dated		Total Amt of 20% Sales Disc to Senior Citizens w/ Proper Cash Slips
	Feb. 17, 2004 *(Exhibit I)*	Jan. 14, 2005 *(Exhibit J)*	
Supermarket Division	₱1,527,626.84		₱1,527,626.84
Coffee Shop Division	385,782.85	₱ 369,795.91	755,578.76
TOTAL	**₱1,913,409.69**	**₱ 369,795.91**	**₱ 2,283,205.60**

5 Pre-marked as Exhibit S.
6 Exhibits I and J.

However, although petitioner was able to properly substantiate by cash slips the amount of P2,283,205.60, its claim for tax credit/refund should nevertheless be denied because the total claimed amount of P3,305,150.04 was already utilized by petitioner in paying for its Minimum Corporate Income Tax (MCIT) Due for taxable year 2000, as follows:[7]

Gross Income	P 352,632,511.00
Less: Deductions	333,831,946.00
Taxable Income	P 18,800,565.00
Minimum Corporate Income Tax Due	P 7,052,650.00
Less: Creditable Tax Withheld for the Fourth Quarter	5,059,015.00
Tax Payable	P 1,993,635.00

Further, this fact was admitted by petitioner's Finance Manager, Ms. Amelita Cauilan, during the hearing conducted on June 21, 2004, to wit:[8]

ATTY. MANUEL

Q. Ms. Caulian, with respect to the discounts granted to senior citizens, can you tell to this Honorable Court how did you treat such discount for purposes of income tax?

MS. CAUILAN

A. We deducted the sales discounts as prepaid tax credit.

ATTY. MANUEL

Q. And why did you treat such discount as prepaid tax credit?

MS. CAUILAN

A. Because under Republic Act No. 7432, establishments which give 20% discount to qualified senior citizens are entitled to treat the same as tax credit.

ATTY. MANUEL

Q. And for the year 2000, how much is the tax due for this?

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7 Exhibit F.
8 TSN, June 21, 2004, pp. 10-13.

MS. CAUILAN

A. For 2000, the tax due is P7,052,650.00.

ATTY. MANUEL

Q. And did the petitioner pay its tax for the year 2000?

MS. CAUILAN

A. Yes.

ATTY. MANUEL

Q. And how much did the company pay for the income tax for the year 2000?

MS. CAUILAN

A. The petitioner paid the amount of P1,993,635.00.

ATTY. MANUEL

Q. Do you have any proof of payment?

MS. CAUILAN

A. At the bottom portion of the Annual Income Tax Return, there is a machine validation amounting to P1,993,635.00.

xxx xxx xxx

ATTY. MANUEL

Q. As you stated, why is it that you only paid the amount of P1,993,635.00?

MS. CAUILAN

A. **Because that amount represents the total amount payable after deducting the creditable tax withheld and the prepaid tax credit from the discounts granted to senior citizens.** *(Underlining supplied.)*

Thus, based on the above testimony,[9] the subject claim of ₱3,305,150.04 formed part of the amount of ₱5,059,015.00 reflected as "Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter" in petitioner's 2000 income tax return

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[9] Both documentary and testimonial.

filed with the PNB Large Taxpayers Center on April 16, 2001.[10] The amount of ₱5,059,015.00 (including the subject claim of ₱3,305,150.04) was applied against the MCIT due of ₱7,052,650.00 leaving an income tax payable of ₱1,993,635.00 which petitioner paid to the PNB Large Taxpayers Center on the same date of April 16, 2001.

Considering that petitioner had already applied the subject claim of ₱3,305,150.04 against its 2000 income tax liability, it is no longer entitled to its claim for a tax credit/refund thereof.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

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10 Exhibit F.

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
Chairman, First Division