REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CENTRAL LUZON DRUG CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7206

Members:

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

Promulgated:

JUL 23 2007; 9:15 am

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DECISION

BAUTISTA, *J.*:

The instant petition seeks the issuance of a tax credit certificate in the total amount of P32,170,409.00 representing twenty percent (20%) sales discounts allegedly granted to senior citizens on their purchases of medicines from petitioner during taxable year 2002, pursuant to Republic Act (R.A.) No. 7432.[1]

Central Luzon Drug Corporation (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. In 2002, it operated twenty-two (22) drug stores which was duly

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[1] Otherwise known as *"An Act To Maximize The Contribution Of Senior Citizen To Nation Building, Grant Benefits And Special Privileges And For Other Purposes"*

licensed by the Bureau of Food and Drugs, the Department of Trade and Industry, and the local government units where its drugstores are located.[2]

For the year 2002, petitioner supposedly granted twenty percent (20%) sales discounts to qualified senior citizens on their purchases of medicines in the total amount of P32,170,409.00, in compliance with Republic Act No. 7432 and its Implementing Rules and Regulations.[3]

In its Annual Income Tax Return (ITR) for the year 2002 filed on April 15, 2003,[4] petitioner allegedly treated the 20% sales discounts of P32,170,409.00 as prepaid tax credit by reflecting the same as creditable tax withheld for the first three quarters and fourth quarter in the amounts of P22,738,877.00 and P9,431,532.00, respectively, as shown below:

Sales/Revenues/Receipts/Fees	674,877,125.00
Less: Cost of Sales/Services	612,791,955.00
Gross Income from Operation	62,085,170.00
Add: Non-operating & Other Income	1,754,610.00
Total Gross Income	63,839,780.00
Less: Deductions	67,770,321.00
Taxable Income	(3,930,541.00)
Minimum Corporate Income Tax (MCIT)	1,241,703.00
Less: Tax Credits	
Prior Year's Excess Credits	44,386,420.00
Creditable Tax Withheld for the First Three Quarters	22,738,877.00
Creditable Tax Withheld for the Fourth Quarter	9,431,532.00
Total Tax Credits	76,556,829.00
Tax Overpayment	75,315,126.00

On April 13, 2005, petitioner filed with respondent a request for the issuance of a tax credit certificate for P32,170,409.00, corresponding to the 20% sales discounts it purportedly granted to senior citizens for the year 2002.[5] On April 14, 2005, petitioner elevated its claim before this Court by filing a Petition for Review.

In his Answer filed on May 30, 2005, respondent raised the following Special and Affirmative Defenses, to wit:

[2] Paragraphs 1 and 2, Joint Stipulation of Facts, Records, page 52
[3] Paragraph 3, Petition for Review, Records, page 2
[4] Exhibit "C"
[5] Exhibit "E"; paragraph 4, Joint Stipulation of Facts, Records, page 52

"5. The claim for refund is still under examination by the respondent's Bureau;

6. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;

7. 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;

8. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

To prove the amount of sales discounts granted to qualified senior citizens on their purchases of medicines, petitioner moved to avail the services of an independent Certified Public Accountant (CPA) in the presentation of voluminous documents consisting of cash slips, summary of sales and discount, and special record book pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97[6]. The Court granted petitioner's motion on September 27, 2005.

After trial and petitioner's submission of its Memorandum on March 15, 2007, the case was submitted for decision on April 4, 2007. Respondent failed to submit his Memorandum.

In their Joint Stipulation of Facts, petitioner and respondent interposed the following issues for the consideration of this Court:

"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 and is entitled to the issuance of a tax credit certificate in a total amount of P32,170,409.00 representing the discounts it granted to senior citizens on their purchases of medicines in the year 2002."

[6] Records, pages 57-61

The first issue stemmed out of the difference between the provisions found in Section 4(a) of R.A. No. 7432 and Sections 2(i) and 4 of Revenue Regulations No. 2-94, quoted herein as follows:

R.A. No. 7432

SECTION 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**; *(Emphasis supplied)*

Revenue Regulations No. 2-94

SECTION 2. *Definitions.* — For purposes of these regulations:

x x x

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)*

x x x

SECTION 4. *Recording/Bookkeeping Requirement for Private Establishments.* — Private establishments, *i.e.*, transport services, hotels and similar lodging establishments, restaurants, recreation centers, drugstores, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, giving 20% discounts to qualified senior citizens are required to keep separate and accurate record of sales made to senior citizens, which shall include the name, identification number, gross sales/receipts, discounts, dates of transactions and invoice number for every transaction.

The amount of 20% discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of the VAT and other percentage taxes. *(Emphasis supplied)*

The Supreme Court in the case of **Commissioner of Internal Revenue vs. Central Luzon Drug Corporation**[7] settled the issue of whether the 20% sales discounts 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 as a deduction from gross income as provided under Revenue Regulations No. 2-94, in this wise:

> "RA 7432 specifically allows private establishments to claim as *tax credit* the amount of discounts they grant. In turn, the Implementing Rules and Regulations, issued pursuant thereto, provide the procedures for its availment. To deny such credit, despite the plain mandate of the law and the regulations carrying out that mandate, is indefensible.
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> First, the definition given by petitioner is erroneous. It refers to *tax credit* as the amount representing the 20 percent discount that '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.' In ordinary business language, the *tax credit* represents the amount of such discount. However, the manner by which the discount shall be credited against taxes has not been clarified by the revenue regulations.
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> By ordinary acceptation, a discount is an 'abatement or reduction made from the gross amount or value of anything.' To be more precise, it is in business parlance 'a deduction or lowering of an amount of money;' or 'a reduction from the full amount or value of something, especially a price.' In business there are many kinds of discount, the most common of which is that affecting the *income statement* or financial report upon which the *income tax* is based.
>
> x x x
>
> Sections 2.i and 4 of Revenue Regulations No. (RR) 2-94 define tax credit as the 20 percent discount deductible from *gross income* for *income tax* purposes, or from *gross sales* for VAT or other percentage tax purposes. In effect, the *tax credit* benefit under RA 7432 is related to a *sales discount*. This contrived definition is improper, considering that the latter has to be deducted from *gross sales* in order to compute the *gross income* in the *income statement* and cannot be deducted again, even for purposes of computing the *income tax*.
>
> When the law says that the cost of the discount may be claimed as a *tax credit*, it means that the amount — when claimed — shall be treated as a reduction from any tax liability, plain and simple. The option to avail of the tax credit benefit depends upon the existence of a tax liability, but to limit the benefit to a *sales discount* — which is not even identical to the discount privilege that is granted by law — does not define it at all and serves no useful purpose. The definition must, therefore, be stricken down." (*Citations omitted*)

[7] G.R. No. 159647. April 15, 2005.

Based on the foregoing, the twenty percent (20%) sales discounts granted to qualified senior citizens was correctly treated by petitioner as tax credits pursuant to R.A. No. 7432, not deductions from gross income as provided in Revenue Regulations No. 2-94.

The Court notes, however, that R.A. No. 7432 has been amended by R.A. No. 9257 entitled "Expanded Senior Citizens Act of 2003." Under the new law, the term "tax credit" is no longer used. The pertinent portion of Section 4 of R.A. No. 9257 provides:

> "The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered, *Provided,* That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. *Provided, further,* That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended."

Notwithstanding the passage of R.A. No. 9257, R.A. No. 7432 is still the applicable law because it was in force at the time this case arose.

As for the second issue, the result of the audit conducted by the commissioned independent CPA showed that of the P32,170,409.00 claimed as 20% sales discounts, P27,956,588.55 were properly supported by cash slips, detailed as follows[8]:

			20% Sales Discounts to Senior Citizens		
		Branch	**Per Book**	**per Audit**	**Variance**
1	582	Balanga, Rizal	2,031,292.83	2,000,786.47	30,506.36
2	583	MACB Square, Mabalacat	2,253,612.40	1,470,793.15	782,819.25
3	593	Camiling	1,008,867.10	991,253.54	17,613.56
4	594	Apalit McArthur Highway	2,844,451.66	2,556,353.97	288,097.69
5	597	Cabanatuan Maharlika	881,054.99	2,059,249.58	(1,178,194.59)
6	598	Arayat Poblacion	1,048,264.62	1,050,339.10	(2,074.48)
7	599	Tarlac Juan Luna	2,942,307.21	2,310,309.33	631,997.88
8	600	Balanga Paterno	3,185,802.59	3,163,448.97	22,353.62
9	611	Hyatt Garden Dolores	5,173,482.44	4,517,363.08	656,119.36
10	612	Cabanatuan Del Pilar	1,921,344.29	1,634,357.10	286,987.19
11	618	Subic, Nat'l Hway	280,295.32	356,957.84	(76,662.52)
12	621	Guimba Nueva Ecija	190,099.65	181,546.50	8,553.15
13	623	Gapan Maharlika	1,060,522.68	1,078,825.05	(18,302.37)
14	628	Mabalacat McArthur	658,293.60	634,794.73	23,498.87
15	631	Sindalan Pampanga	1,138,688.83	874,575.85	264,112.98
16	635	Sta. Cruz, Zambales	494,423.70	424,822.22	69,601.48

[8] Exhibit "HH"

17	637	Munoz, Nueva Ecija	458,183.50	456,518.02	1,665.48
18	641	Robinsons Seaport	1,196,942.05	1,189,163.10	7,778.95
19	642	Iba Zambales	612,928.29	587,173.81	25,754.48
20	644	Floridablanca	359,292.55	344,420.76	14,871.79
21	650	Tarlac Concepcion	29,953.66	29,684.65	269.01
22	651	Tarlac Tanedo	43,971.01	43,851.73	119.28
		Total	**29,814,074.97**	**27,956,588.55**	**1,857,486.42**

However, a careful examination of the report shows that the audited amounts of 20% sales discounts exceeded the amounts recorded per books by P1,275,233.96 in the following branches:

			20% Sales Discounts to Senior Citizens		
		Branch	**per Book**	**per Audit**	**Excess per Audit**
5	597	Cabanatuan Maharlika	881,054.99	2,059,249.58	(1,178,194.59)
6	598	Arayat Poblacion	1,048,264.62	1,050,339.10	(2,074.48)
11	618	Subic, Nat'l Hway	280,295.32	356,957.84	(76,662.52)
13	623	Gapan Maharlika	1,060,522.68	1,078,825.05	(18,302.37)
		TOTAL			**(1,275,233.96)**

Such being the case, the excess amount of P1,275,233.96 shall be deducted from the substantiated amount of P27,956,588.55. Thus, the proper subject of the claim is P26,681,354.59. This notwithstanding, petitioner must prove that it declared its corresponding gross sales to senior citizens (inclusive of the 20% sales discounts) in its Annual ITR for 2002 in order to be entitled to the claim.

Under petitioner's Annual ITR and audited financial statements,[9] it had gross sales amounting to P674,877,125.00. However, the Court cannot ascertain from the documents submitted by petitioner such as *Schedule of Sales (net),*[10] *Schedule of Prepaid Tax-OSCA,*[11] *and Special Record Books*[12] for the year 2002, whether its gross sales of P674,877,125.00 included its gross sales to senior citizens of P26,681,354.59. The *Schedule of Prepaid Tax-OSCA,* taken from the *Special Record Books,* showed its daily sales to qualified senior citizens and the corresponding twenty percent (20%) discount granted by each of the twenty-two branches of petitioner. Meanwhile, the *Schedule of Sales* showed only its total

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[9] Exhibit "C" & "D"
[10] Exhibits "BB" and "CC"
[11] Exhibit "FF"
[12] Exhibit "EE"

monthly sales without indicating which portion therein were sales to senior citizens. Petitioner should have presented its daily net sales as reflected in the general ledger, cash receipts book, sales book or any other document whereby the Court can trace or verify that petitioner's gross sales of P674,877,125.00 for the year 2002 included its gross sales to senior citizens for the same year.

In sum, though the twenty percent (20%) sales discounts granted to senior citizens on their purchase of medicines should be treated as a tax credit and petitioner was able to substantiate the same, the instant petition will not prosper for petitioner's failure to show that its gross sales to senior citizens were declared as part of its taxable income.

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(On Leave)
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