REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

ST. WILLIAM DRUG CORPORATION,
Petitioner,

C.T.A. CASE NO. 6928

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 12 2006, 1:00 PM

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DECISION

ACOSTA, E., PJ.:

The instant petition seeks the refund or issuance of a tax credit certificate in the total amount of P468,949.88 allegedly representing overpaid income tax arising from the erroneous treatment of the twenty percent (20%) sales discounts granted to qualified senior citizens on their purchases of medicines from petitioner during the taxable years 2001 and 2002, as deductions from gross income based on Revenue Regulations No. 2-94 instead of treating it as tax credits pursuant to Republic Act (R.A.) No. 7432.[1]

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

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Petitioner St. William Drug Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines with business address at Laoag City Commercial Complex, F.R. Castro Avenue corner Villanueva Street, Laoag City while respondent is the duly appointed Commissioner of Internal Revenue with office address at the BIR National Office Building, Diliman, Quezon City.

As a franchisee under the business name and style of "Mercury Drug", petitioner is duly licensed to operate drug stores by the Department of Trade and Industry, the Bureau of Food and Drugs, and the local government unit of Laoag City.[2]

On April 15, 2002 and April 15, 2003, petitioner filed its Annual Income Tax Returns for taxable years 2001 and 2002, respectively, paying income taxes in the respective amounts of P89,044.75 and P90,990.21,[3] computed as follows:

Tax Year 2001

Sales, Net	P65,525,846.97
Less: Cost of Sales	61,140,172.81
Gross Income from Operation	P 4,385,674.16
Add: Non-operating & Other Income	267.82
Total Gross Income	P 4,385,941.98
Less: Deductions	4,044,514.33
Taxable Income	P 341,427.65
Income Tax	P 109,256.85
Less: Unexpired Excess of Prior Year's MCIT Over Normal Income Tax Rate	20,212.10
Aggregate Income Tax Due	**P 89,044.75**
Less: Tax Credits/Payments	
Creditable Tax Withheld for the First Three Quarters	59,713.55
Creditable Tax Withheld for the Fourth Quarter	3,168.00
Total Amount Payable	**P 26,163.20**

Tax Year 2002

Sales, Net	P69,317,984.31
Less: Cost of Sales	65,297,541.22
Gross Income from Operation	P 4,020,443.09
Add: Non-operating & Other Income	53,509.00
Total Gross Income	P 4,073,952.09

[2] Par. 2, Joint Stipulation of Facts and Issues, Records, p. 62
[3] Exhibits "B" and "L"; Par. 3, Joint Stipulation of Facts and Issues, Records, p.62

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Less: Deductions	3,789,607.68
Taxable Income	P 284,344.41
Income Tax	**P 90,990.21**
Less: Tax Credits/Payments	
Creditable Tax Withheld for the First Three Quarters	78,426.54
Creditable Tax Withheld for the Fourth Quarter	3,001.79
Total Amount Payable	**P 9,561.88**

Instead of claiming the full amount of the twenty percent (20%) sales discounts it granted to qualified senior citizens as a tax credit in accordance with R.A. No. 7432, petitioner claimed the amount as a deduction from gross income pursuant to Revenue Regulations No. 2-94 issued by the Commissioner of Internal Revenue.[4]

On February 19, 2004, petitioner filed with respondent a claim for tax refund and/or credit in the total amount of P468,949.88 allegedly representing overpaid income taxes arising from the erroneous treatment of the 20% sales discounts granted to senior citizens on their purchases of medicines from petitioner during the period January 1, 2001 to December 31, 2002,[5] computed as follows:

Tax Year 2001

Sales, Net	P65,525,846.97
Add: Cost of 20% Discounts to Senior Citizens	324,255.31
Sales, Gross	P65,850,102.28
Less: Cost of Sales	61,140,172.81
Gross Profit	P 4,709,929.47
Add: Other Income	267.82
Total Income	P 4,710,197.29
Less: Operating Expenses	4,044,514.33
Net Income Before Income Tax	P 665,682.96
Income Tax	P 213,018.55
Less: Income Tax Actually Paid	89,044.75
Cost of 20% Discount to Senior Citizens	324,255.31
Income Tax (Refundable/Creditable)	P (200,281.51)

Tax Year 2002

Sales, Net	P69,317,984.31
Add: Cost of 20% Discounts to Senior Citizens	395,100.54
Sales, Gross	P69,713,084.85
Less: Cost of Sales	65,297,541.22

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[4] Par. 4, Joint Stipulation of Facts and Issues, Records, p. 63
[5] Exhibit "Z"

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Gross Profit	P 4,415,543.63
Add: Other Income	53,509.00
Total Income	P 4,469,052.63
Less: Operating Expenses	3,789,607.68
Net Income Before Income Tax	P 679,444.95
Income Tax	P 217,422.38
Less: Income Tax Actually Paid	90,990.21
Cost of 20% Discount to Senior Citizens	395,100.54
Income Tax (Refundable/Creditable)	P (268,668.37)
TOTAL INCOME TAX (REFUNDABLE/CREDITABLE)	P (468,949.88)

Due to respondent's inaction of the claim for tax refund and/or credit, petitioner filed the instant Petition for Review on April 13, 2004 in order to preserve its right to the claim.

In his Answer filed on May 18, 2004, respondent raised the following Special and Affirmative Defenses:

> "4. Revenue Regulations No. 2-94 did not alter, modify or amend the intent of the law to consider the 20% discount granted to qualified senior citizen as deduction from petitioner's gross income and not as credit against its tax liability as petitioner insists;
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> 5. With the accumulation of experience and growth of specialized capabilities by the agency charged with implementing a particular statute, it is now a recognized principle that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the constitution and other laws **(Nestle Philippines, Inc. vs. CA, et al., 203 SCRA 504);**
>
> 6. R.A. 7432 allows the discounts granted to senior citizens to be claimed as a tax credit but is silent as to the mechanics of availing the same. For clarification and as a curative measure, Revenue Regulations No. 2-94 was issued defining the term "tax credit" as used in the law and providing therein the manner of claiming the same, which is by deduction from the establishment's gross income and not from its income tax liability. Otherwise an absurdity, not intended by the law, will arise;
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> 7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 8. Petitioner failed miserably to show that the total amount of Php468,949.88 claimed as tax credit for taxable years 2001 and 2002 were erroneously or illegally collected, or that the same was properly documented;

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9. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable;

10. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

11. It is incumbent upon petitioner to show that it has complied with the provisions of Sections 204 in relation to Section 229 of the Tax Code; and

12. Well-established is the rule that refund/tax credits are construed strictly against the taxpayer as they partake of the nature of exemption from tax."[6]

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 which was granted by this Court[7] It likewise presented other documentary evidence to bolster its case as well as testimonial evidence.

Respondent, for his part, submitted the case for decision without filing his memorandum.[8] In petitioner's memorandum,[9] however, it prayed that, based on the audit conducted by the commissioned independent CPA, it be granted a tax refund and/or credit in the reduced amount of P453,328.24 for the taxable years 2001 and 2002 instead of P468,949.88 originally claimed.

In their Joint Stipulation of Facts and Issues filed on September 10, 2004, petitioner and respondent interposed the following issues for the consideration of this Court:

1. Whether or not the 20% discount granted to qualified senior citizens on their purchases of medicines should be treated as a tax credit deductible from the tax due under Republic Act No. 7432; or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94;

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[6] Records, pp. 32-33
[7] Records, pp. 69-71, 81
[8] Records, p. 205
[9] Records, pp. 206-222

2. Whether or not petitioner granted discounts to qualified senior citizens on their purchases of medicines pursuant to Republic Act No. 7432 in the total amount of P719,355.85; and

3. Whether or not petitioner is entitled to a tax credit/refund in the amount of P468,949.88 allegedly representing the cost of the 20% discount granted to qualified senior citizens on their purchases of medicines during the period from January 1, 2001 to December 31, 2002 and overpaid income taxes less income taxes payable for 2001 and 2002 taxable years.

Anent the first issue, the particular provisions of the law and regulation are hereunder reproduced for easy reference:

Section 4(a) R.A. 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: xxx"

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 sales for value-added tax and other percentage tax purposes."

Petitioner maintains that Section 4(a) of Republic Act No. 7432 provides in clear and unequivocal terms that the discounts granted to qualified senior citizens on their purchases of medicines may be claimed directly as a tax credit against petitioner's tax liability in its income tax return and that Section 2(i) of Revenue Regulations No. 2-94, a mere implementing administrative regulation, cannot modify, alter or amend the clear mandate of Section 4(a) of R.A. No. 7432.

Respondent, however, argues that Revenue Regulations No. 2-94 did not alter, modify or amend the intent of R.A. No. 7432 to consider the 20% sales discount granted to qualified senior citizens as deduction from petitioner's gross income and not as credit against petitioner's tax liability. Although R.A. No. 7432 allows the discounts granted to senior citizens to be claimed as a tax credit, it is silent at to the mechanics of availing the same. Thus, for clarification and as a curative measure, Revenue Regulations No. 2-94 was issued.

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. 7432 or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94 had already been resolved by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*[10] wherein it held:

> "Section 4(a) of RA 7432 grants to senior citizens the privilege of obtaining a 20 percent discount on their purchase of medicine from any private establishment in the country. The latter may claim then claim the cost of the discount as a *tax credit*. xxx
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> 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 grants are void. Basic is the rule that administrative regulations cannot amend or revoke the law.
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> xxx xxx xxx
>
> *Tax Credit versus*
> *Tax Deduction*
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> Although the term is not specifically defined in our Tax Code, **tax credit** generally refers to an amount that is "subtracted directly from one's total tax liability." It is an "allowance against the tax itself" or "a deduction from what is owed" by a taxpayer to the government. Examples of **tax credits** are withheld taxes, payments of estimated tax, and investment tax credits.

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

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Tax credit should be understood in relation to other tax concepts. One of these is **tax deduction** — defined as a subtraction "from income for tax purposes," or an amount that is "allowed by law to reduce income prior to [the] application of the tax rate to compute the amount of tax which is due." An example of a **tax deduction** is any of the allowable deductions enumerated in Section 34 of the Tax Code.

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 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.

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Laws Not Amended
by Regulations

Second, the law cannot be amended by a mere regulation. In fact, a regulation that "operates to create a rule out of harmony with the statute is a mere nullity"; it cannot prevail.

It is a cardinal rule that courts "will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it x x x." In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that "Congress may not have the opportunity or competence to provide." The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. **Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.**

In the present case, the **tax authorities have given the term tax credit in Sections 2.i and 4 of RR 2-94 a meaning utterly in contrast to what RA 7432 provides. Their interpretation has muddled up the intent of Congress in granting a mere discount privilege, not a sales discount. The administrative agency issuing these regulations may not enlarge, alter or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature.**

In case of conflict, the law must prevail. A "regulation adopted pursuant to law is law." Conversely, a regulation or any portion thereof not adopted pursuant to law is no law and has neither the force nor the effect of law.

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Grant of Tax Credit
Intended by the Legislature

Fifth, RA 7432 itself seeks to adopt measures whereby senior citizens are assisted by the community as a whole and to establish a program beneficial to them. These objectives are consonant with the constitutional policy of making "health x x x services available to all the people at affordable cost" and of giving "priority for the needs of the x x x elderly." Sections 2.i and 4 of RR 2-94, however, contradict these constitutional policies and statutory objectives.

Furthermore, Congress has allowed all private establishments 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**."

Clearly, the 20% sales discounts granted to qualified senior citizens should be treated as tax credits pursuant to R.A. No. 7432, instead of as mere deductions from gross income as provided in Revenue Regulations No. 2-94.

We will now proceed to the second issue of whether petitioner granted discounts to qualified senior citizens on their purchases of medicines pursuant to Republic Act No. 7432 in the total amount of P719,355.85.

To prove that it actually granted the 20% sales discounts to qualified senior citizens, petitioner presented the following documents:

1. Various cash slips issued covering the taxable years 2001 and 2002;[11]
2. 2001 and 2002 Summary of Sales and Discounts for Senior Citizens;[12]
3. 2001 and 2002 Special Record Books;[13]
4. 2001 and 2002 Cash Receipts Books;[14]
5. 2001 and 2002 General Ledgers;[15]
6. Report of the commissioned independent CPA;[16]
7. 2001 and 2002 Annual Income Tax Returns;[17] and
8. 2001 Audited Income Statement[18] and 2002 Statement of Income and Retained Earnings.[19]

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[11] Exhibits "AA" & "EE", inclusive of submarkings
[12] Exhibits "KK" & "LL"
[13] Exhibits "BB" & "FF"
[14] Exhibits "CC" & "GG"
[15] Exhibits "DD" & "HH"
[16] Exhibit "JJ"
[17] Exhibits "B" & "L"

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After a thorough examination of the various cash slips, in relation to petitioner's Summary of Sales and Discounts for Senior Citizens and the Special Record Books for 2001 and 2002, this Court finds the report of the commissioned independent CPA to be in order. It is observed though that in the said report, the 20% sales discounts given to senior citizens for the years 2001 and 2002 wherein the required details for the issuance of cash slips are complete, amounted only to P696,382.84.[20] It is noted likewise that petitioner, in its memorandum, adopted the findings of the commissioned independent CPA.

Thus, We proceed to the last issue of whether or not petitioner is entitled to a tax credit/refund in the amount of P468,949.88 allegedly representing the cost of the 20% discount granted to qualified senior citizens on their purchases of medicines during the period from January 1, 2001 to December 31, 2002 and overpaid income taxes less income taxes payable for taxable years 2001 and 2002.

To be entitled to the claim sought, petitioner must first establish to this Court that eighty percent (80%) of the sales made to senior citizens ("Net Sales to Senior Citizens") were declared as part of its taxable income. This is assuming that the 20% sales discounts were indeed originally treated as deductions from its gross income.

To prove that it declared the "Net Sales to Senior Citizens" as part of its taxable income, petitioner presented in evidence its Cash Receipts Books[21] for taxable years 2001 and 2002 showing the January 2001[22] and 2002[23] transactions, its Special Records Books[24] as well as its General Ledgers[25] for the same taxable years.

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[18] Exhibit "K-2"
[19] Exhibit "Y-2"
[20] Exhibit "JJ"
[21] Exhibits "CC" & "GG"
[22] Exhibit "CC-1"
[23] Exhibit "GG-1"
[24] Exhibits "BB" & "FF"
[25] Exhibits "DD" & "HH"

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After a careful review of the above documents, this Court finds that petitioner failed to prove that the "Net Sales to Senior Citizens" were actually declared in petitioner's Annual Income Tax Returns for taxable years 2001 and 2002.[26]

For taxable years 2001 and 2002, petitioner reported sales of P65,525,846.97 and P69,317,984.31, respectively, under Item 14 pertaining to "Sales/Revenue/Receipts/Fees (Schedule 1) in its Annual Income Tax Returns.[27] These sales were likewise reflected in petitioner's Audited Financial Statements[28] for the same tax years. However, petitioner failed to show which part of the reported sales comprised of the "Net Sales to Senior Citizens". To be more precise, petitioner failed to present a detailed breakdown of its daily net sales as reflected in the Cash Receipts Books. The detailed breakdown would have enable this Court to verify or trace whether the daily "Net Sales to Senior Citizens" as recorded in the Special Records Books actually formed part of the daily net sales amounts in the Cash Receipts Books.

To illustrate, petitioner's "Net Sales to Senior Citizens" on January 12, 2001 amounted to P6,552.76 as recorded in the 2001 Special Record Book.[29] On the other hand, petitioner's total sales (inclusive of output VAT) for the same date as appearing in the 2001 Cash Receipts Book amounted to P192,462.08.[30] Considering that petitioner did not provide a breakdown for the latter amount, this Court could not determine whether or not the "Net Sales to Senior Citizens" in the amount of P6,552.76 appearing in the Special Records Books was indeed included in the total sales of P192,462.08 appearing in the Cash Receipts Books.

For failure of petitioner to sufficiently prove that its "Net Sales to Senior Citizens" were in fact declared in its Annual Income Tax Returns for taxable years 2001 and 2002,

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[26] In relation to its Audited Financial Statements for the same taxable years
[27] Exhibits "B-3" & "L-3"
[28] Exhibits "K-2", "K-3", "Y-2", & "Y-3"
[29] Exhibit "BB-1"
[30] Exhibit "CC-3"

petitioner's claim cannot be granted. It cannot be over-emphasized that 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.[31]

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

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate 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

[31] Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCTA 459

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