REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TROPICAL HUT FOOD MARKET, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7174

Members:

Acosta, *PJ*
Bautista, and
Casanova, *JJ.*

Promulgated:

FEB 0 6 2009 3:30pm

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DECISION

ACOSTA, *PJ:*

The Case

The instant Petition is an appeal from the Final Decision on Disputed Assessment issued by the BIR denying petitioner's protest against the deficiency minimum corporate income tax assessment of P6,232,503.00 for the year 2000.[1] The Petition raised not only the disputed assessment, it likewise sought the refund or issuance of tax credit certificate in the amount of P3,305,150.04 representing the 20% discount granted to senior citizens pursuant to Republic Act No. 7432.

[1] Petition; Petitioner's Memorandum, p. 320, *Rollo*; and Respondent's Memorandum, p. 338, *Rollo*.

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The Facts

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal address at 163 EDSA, Mandaluyong City.[2]

On the other hand, respondent is being sued in her official capacity. She is holding office at BIR National Office Building, Diliman, Quezon City, where she may be served with summons, notices and other legal processes.[3]

Petitioner filed its 2000 Income Tax Return on April 16, 2001,[4] declaring therein, among others the following:

Sales	2,281,084,932.00
Less: Cost of Sales	1,989,121,501.00
Gross Income From Operation	291,963,431.00
Add: Other Income	60,669,080.00
Total Gross Income	352,632,511.00
Less: Deductions	333,831,946.00
Taxable Income	18,800,565.00
Tax Rate	32%
Income Tax	1,424,835.00
Minimum Corporate Income Tax (MCIT)	7,052,650.00
Income Tax Due	7,052,650.00
Less: Total Tax Credits/Payments	5,059,015.00
Tax Payable	1,993,635.00

(Underlines supplied)

Petitioner filed its administrative claim for refund representing the discounts granted to senior citizens for taxable year 2000 on April 14 & 15, 2003.[5] Later, it elevated its claim with this Court on April 15, 2003. The Petition was docketed as CTA Case No. 6674.[6]

Meanwhile, petitioner received from the BIR a Letter of Authority dated June 30, 2003 authorizing the examination of petitioner's books of account for all internal

[2] Par. 1, Joint Stipulation of Facts and Issues.
[3] Par. 1, Petition in relation to item no. 1, Answer; and Par. 2, Joint Stipulation of Facts and Issues.
[4] Par. 9, Joint Stipulation of Facts and Issues; and Exhibit B.
[5] Par. 10, Joint Stipulation of Facts and Issues.
[6] Petitioner's Opposition to Respondent's Motion to resolve first the issue of whether or not the Honorable Court can take cognizance of the instant case based on prescription and lack of cause of action, p. 107, *Rollo*.

revenue taxes from the period from January 1, 2000 to December 31, 2000.[7] Later, it received a revised Preliminary Assessment Notice dated November 10, 2004 assessing petitioner for deficiency income tax (MCIT), deficiency withholding tax-wages, deficiency expanded withholding tax, deficiency value added tax and deficiency documentary stamp tax.[8]

In a letter dated November 16, 2004, petitioner requested for a reconsideration of the said Preliminary Assessment Notice.[9]

Petitioner received a Formal Letter of Demand dated November 25, 2004 assessing it of deficiency income tax in the amount of P6,232,503.99. The other taxes, namely: withholding tax, expanded withholding tax, value added tax, documentary stamp tax were no longer included in the assessment notice.[10] The said deficiency income tax (MCIT) assessment was computed as follows:[11]

Sales		P2,281,084,932.00
Less: OSCA as Sales Discount		3,635,665.04
Net Sales		P2,277,449,266.96
Less: Cost of Sales	P1,770,436,868.00	
Direct Cost	218,684,633.00	P1,989,121,501.00
Gross Income From Operation		288,327,765.96
Add: Other Income		60,669,080.00
Total Gross Income		P 348,996,845.96
Tax Due		P 6,979,936.92
Less: Creditable Tax Withheld	P 1,421,639.01	
Tax Paid Per Return	1,993,635.00	3,415,274.01
Deficiency Tax		P 3,564,662.91
Add: 20% Interest up to 12-31-04 (.7414)		2,642,841.08
Compromise Penalty		25,000.00
TOTAL AMOUNT DUE		P 6,232,503.99

Petitioner protested and contested the assessment of deficiency income tax, reiterating its argument that the BIR's treatment of discounts to senior citizens as sales

[7] Par. 3, Joint Stipulation of Facts and Issues; and Exhibit H.
[8] Par. 4, Joint Stipulation of Facts and Issues; and Exhibit I.
[9] Exhibit J.
[10] Par. 5, Joint Stipulation of Facts and Issues.
[11] Exhibit K.

discounts instead of as tax credit is not in accordance with law and jurisprudence and requested for reconsideration and reinvestigation of audit results/assessment notice.[12]

Petitioner received the Final Decision on Disputed Assessment denying for lack of legal basis petitioner's protest against the assessed deficiency income tax for the year 2000.[13]

On March 22, 2005, petitioner filed the instant Petition before this Court praying that the BIR's final decision on the disputed assessment be reversed and set aside; it be declared entitled to a tax credit/refund in the amount of P3,305,150.04; and the respondent be ordered to refund the said amount.

In her Answer filed on May 17, 2005, the Commissioner prayed for the dismissal of the petition for lack of merit and for a judgment ordering the petitioner to pay P6,232,503.99 for the year 2000 as deficiency minimum corporate income tax, inclusive of increments, plus 25% surcharge for late payment and 20% annual interest from December 31, 2004 until fully paid pursuant to Sections 248 and 249 of the Tax Code.

This case was submitted for decision on December 23, 2008 taking into consideration petitioner's Memorandum filed on December 9, 2008 and respondent's Memorandum filed on December 15, 2008.

The Issues

Submitted for this Court's resolution are the following issues jointly agreed upon by the parties,[14] to wit:

> 1. Whether or not the Honorable Court can take cognizance of the instant case based on the following grounds:
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> 1.1. The pleading asserting the claim states no cause of action (Section 1 (g), Rule 16 of the Revised Rules of Court).
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> 1.2. Assuming the claim states a cause of action, the cause of action is barred by the statute of limitations (Section 1(f), Rule 16 of the Revised Rules of Court) or by prescription.

[12] Par. 6, Joint Stipulation of Facts and Issues; and Exhibit L.
[13] Par. 7, Joint Stipulation of Facts and Issues; and Exhibit M.
[14] Joint Stipulation of Facts and Issues.

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2. Whether or not during the taxable year 2000, petitioner granted discounts to qualified senior citizens on their purchases of medicines pursuant to Republic Act No. 7432 in the total amount of P3,305,150.04.

3. Whether the 20% sales discounts alleged granted to qualified senior citizens on their purchases of medicines should be treated as tax credit deductible from the tax due or as a deduction from gross income.

4. Whether or not the Petitioner's claim for tax credit of alleged overpaid income tax for taxable year 2000 is substantiated by documentary evidence.

5. Whether the reported gross sales and other income is accurate and whether the claimed deductions comply with the requisites for its deductibility as required by law.

6. Whether or not Petitioner is entitled to a refund in the amount of P3,305,150.04 representing alleged sales discounts granted to senior citizens on their purchases of medicines for taxable year 2000.

7. Whether or not Petitioner is liable to the MCIT covering the taxable year 2000 in the amount of P6,232,503.99.

The Court's Ruling

Considering that petitioner's petition for refund or issuance of tax credit certificate in the amount of P3,305,150.04, representing the alleged 20% sales discount granted to qualified senior citizens pursuant to R.A. 7432 for taxable year 2000 has been decided already by this Court in a separate case (CTA Case No. 6674) rendered on April 26, 2006, this Court will therefore tackle only the issues relative to the disputed assessment.

The issue of whether this Court can take cognizance of this case has already been resolved in the January 19, 2006 Resolution,[15] *viz*:

> "In this instant case, it is unarguable that petitioner received respondent's Formal Letter of Demand dated November 25, 2004 assessing it of deficiency income taxes for the calendar year 2000. And in reply to petitioner's protest to the said assessment notice, respondent issued a Final Decision on Disputed Assessment against petitioner denying its protest on the formal assessment of deficiency income taxes for the calendar year 2000. Petitioner, after it received the Final Decision on February 22, 2005, has a period of thirty days or until March 24, 2005 within which to file this instant petition with this Court pursuant to Section 228 of the National Internal Revenue Code of 1997.
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> xxx xxx xxx

[15] pp.126-130, *Rollo*.

Thus, when petitioner filed this Petition for Review with this Court on March 22, 2005, such filing was within the period allowed by law pursuant to Section 228 of the National Internal Revenue Code of 1997."

Resolving now the merit of the case.

The discounts granted by petitioner to senior citizens for taxable year 2000 became the sole basis of the respondent to assess petitioner of deficiency income tax (MCIT) for the same year,[16] *viz*:

> "OSCA as Sales Discount (P3,635,665.04) – Pursuant to Sec. 4(A) of Republic Act No. 7432, otherwise known as the "Senior Citizen Act", senior citizens are entitled to twenty percent (20%) discount from all establishments relative to utilization of transportation services, restaurants and recreation centers and purchase of medicines anywhere in the country: Provided, that private establishments may claim the cost as "tax credit". However, Sec. 2(i) of Revenue Regulation No. 2-94, which implements Sec. 4(a) of RA 7432, interpreted "tax credit" as the amount representing the 20% discount granted to 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 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. In this instant case, the 20% discount is treated as deduction from the taxpayer's gross income for income tax purposes."

It is apparent that the disputed assessment under review stems from respondent's treatment of the 20% discounts granted to qualified senior citizens as deduction from petitioner's gross income pursuant to Sec. 2(i) of Revenue Regulations No. 2-94, implementing Sec. 4(a) of Republic Act (RA) No. 7432. Therefore, the sole issue to be considered in this case is the proper treatment of the aforesaid 20% discounts granted to qualified senior citizens pursuant to RA 7432, in order to properly rule on the disputed assessment.

The issue of whether the 20% sales discount granted to qualified senior citizens pursuant to Sec. 4(a) of RA No. 7432 may be claimed as a tax credit or as a deduction from gross sales in accordance with Sec. 2(1) of Revenue Regulations No. 2-94 had already been settled in *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*[17] wherein the Supreme Court declared that:

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[16] Exhibits K and M.
[17] GR No. 159647, April 15, 2005.

> "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 sales 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 grant are void. Basic is the rule that administrative regulations cannot amend or revoke the law."

In *Bicolandia Drug Corporation vs. Commissioner of Internal Revenue,*[18] the Supreme Court held that the term cost in Sec. 4 (a) of RA 7432 refers to the amount of the 20% discount. This amount shall be applied as a tax credit, and may be deducted from the tax liability of the entity concerned.

In *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation,*[19] the Supreme Court ruled that the discounts given under RA No. 7432 should be treated as tax credits, not deductions from income, and when claimed shall be treated as a reduction from any tax liability. Pertinent portion of the ruling of the High Court in the said case is hereunder reproduced:

> "It is fundamental rule in statutory construction that the legislative intent may be determined from the language of the statute itself especially when the words and phrases therein are clear and unequivocal. The statue in such a case must be taken to mean exactly what it says. Its literal meaning should be followed; to depart from the meaning expressed by the words is to alter the statute.
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> The above provision explicitly employed the word "tax credit." Nothing in the provision suggests for it to mean a "deduction from gross sales. To construe it otherwise would be a departure from the clear mandate of the law.
>
> Thus, the 20% discount required by the Act to be given to senior citizens is a tax credit, not a deduction from the gross sales of the establishment concerned. As a corollary to this, the definition of 'tax credit' found in Section 2(1) of Revenue Regulations No. 2-94 is erroneous as it refers to tax credit as the amount representing the 20% discount that "shall be deducted by the said establishment from their gross sales for value added tax and other percentage tax purposes." This definition is contrary to what our lawmakers had envisioned with regard to the treatment of the discount granted to senior citizens.
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> Accordingly, when the law says that the cost of the discount may be claimed as a tax credit, it means the amount – when claimed – shall be treated as a reduction from any tax liability. The law cannot be amended by a mere regulation. The administrative agencies issuing these regulations may not enlarge, alter or restrict the provisions of the law they administer. In fact, a regulation that "operates to create a rule out of harmony with the statute is a mere nullity."

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[18] GR No. 142299, June 22, 2006.
[19] GR No. 148512, June 26, 2006.

Since the existence of the 20% discounts amounting to P3,635,665.04 which were granted by petitioner to qualified senior citizens pursuant to Republic Act No. 7432 is recognized by the BIR as sales discount in the Preliminary Assessment Notice, Formal Letter of Demand, and Final Decision on Disputed Assessment[20] and since the jurisprudence cited dictates that such treatment is erroneous; therefore, judicial affirmation of the deficiency income tax (MCIT) assessment is improper.

WHEREFORE, the instant Petition to reverse and set aside the Final Decision on Disputed Assessment is hereby **GRANTED**; and therefore, the deficiency income tax (MCIT) assessment for taxable year 2000 is hereby **CANCELLED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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 Justice

[20] Exhibits I, K and M.