LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ST. LUKE'S MEDICAL CENTER, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5068

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 22 1997

x - x

DECISION

This is a petition for review filed by the petitioner, ST LUKE'S MEDICAL CENTER, INC., against the respondent, COMMISSIONER OF INTERNAL REVENUE, for the latter's decision to hold the petitioner liable for the payment of deficiency value added tax (VAT) on its pharmacy sales for the year 1991 in the amount of P9,866,051.23.

The antecedent facts of the case are as follows:

Petitioner is a non-stock, non-profit corporation duly organized and existing under Philippine laws, and primarily engaged in the hospital business.

On August 2, 1993, petitioner was assessed by respondent to pay a deficiency value added tax (VAT) on its pharmacy sales for the year 1991 in the total amount of ₱9,866,051.23, computed as follows:

Sales - Cash	₱ 54,817,795.51
In-patient	66,878,377.39
Total Sales	₱121,696,172.82
Output Tax Due Thereon (10%)	₱ 12,169,617.28
Less: Input Tax on Purchases	6,376,402.49
Balance	₱ 5,793,214.79
Less: Tax Paid per Return	102,020.77
Tax Due	₱ 5,691,194.02
Add: 25% Surcharge	1,422,798.51
20% Interest	2,652,058.70
Compromise	100,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 9,866,051.23

On September 1, 1993, petitioner protested the aforecited deficiency VAT assessment and prayed for the cancellation thereof.

On January 25, 1994, petitioner's protest was denied by the respondent. Thus, on February 24, 1994, petitioner filed with this Court this instant petition for review.

Petitioner contends that pharmaceutical items that were used by in-patients should not be subjected to VAT since hospital services necessarily include the dispensing or application of drugs and medicines to in-patients, which under Sec. 103 (1) of the Tax Code, as amended, is exempt from value-added tax. Said provision of law states that:

> "SEC. 103. *Exempt Transactions.* - The following shall be exempt from value-added tax:
>
> xxx xxx xxx

(l) Medical, dental, hospital and veterinary services.

xxx xxx xxx"

Petitioner questioned the legal authority of the respondent when it provided in Revenue Regulations No. 5-87, implementing the aforestated provision of the Tax Code, that pharmacy sales are subject to VAT, if it exceeds ₱200,000.00 during a twelve-month period. It states:

"SEC. 9. *Exemptions.*

xxx xxx xxx"

(b) Exempt transactions.

xxx xxx xxx"

(12) Medical, Dental, Hospital and Veterinary services. Laboratory services are also exempted. If the hospital or clinic operates a pharmacy or drugstore, the sale of drugs and medicine, if it exceeds P200,000.00 during a 12 month period is subject to VAT."

Petitioner stressed that there is no legal nor factual basis in respondent's inclusion of in-patient pharmacy sales as one of those items subject to VAT, and that respondent erred in computing the amount of pharmacy sales and in disregarding the sales returns and allowances, discounts and free services as valid deductions.

On the other hand, respondent contends that Sec. 9(b)(12) of Revenue Regulations No. 5-87 is very clear and unequivocable, that pharmacy sales, if it exceeds P200,000.00 during a twelve-month period, is subject to value added tax thus, the question of whether such drugs or pharmaceutical products are sold to out-patients or in-patients is immaterial, and that petitioner failed to present proof that would substantiate its claimed deductions.

For the proper adjudication of this case, the following issues must be resolved by this Court, to wit:

I. WHETHER OR NOT PHARMACY SALES (IN-PATIENT AND OUT-PATIENT) ARE SUBJECT TO VALUE ADDED TAX.

II. WHETHER OR NOT RESPONDENT ERRED IN THE COMPUTATION OF THE TOTAL PHARMACY SALES OF THE PETITIONER.

III. WHETHER OR NOT RESPONDENT ERRED IN NOT TAKING INTO ACCOUNT THE FREE SERVICES AND DISCOUNTS AND SALES RETURNS AND ALLOWANCES, PETITIONER HAS ALLEGEDLY EXTENDED TO ITS CUSTOMERS/PATIENTS, IN THE COMPUTATION OF ITS TOTAL PHARMACY SALES FOR THE YEAR 1991.

With regard to the first issue, petitioner has advanced the view that the selling of drugs and other pharmaceutical items to in-patients fall within the ambit of HOSPITAL SERVICES, under Sec. 103(l) of the National Internal Revenue Code (NIRC), thus exempt from value added tax. Such thesis is devoid of merit. Petitioner has utterly failed to convince this Court, that selling of drugs and other pharmacy items to in-patients form part of its hospital services. Dispensing of drugs is different from the selling of drugs.

Pharmacy services was not included in the exemptions mentioned in Sec. 103 of the Tax Code, thus, it behooves us to apply the principle of strict construction of tax exemption against the taxpayer. It has been a well-settled doctrine in this jurisdiction that tax exemptions are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority on the grounds that taxes are the lifeblood of the government and their prompt payment is an imperious need **(ESSO Standard Eastern, Inc. vs. Acting Commissioner of Customs, 18 SCRA 488; Collector of Internal Revenue vs. Goodrich International Rubber Co., 22 SCRA 1256).** To be exempted therefore, from the payment of taxes, the taxpayer has the duty to justify the exemptions by words too plain to be mistaken and too categorical to be misinterpreted **(Commissioner of Internal Revenue vs. P. J. Kiener Company, Ltd., 65 SCRA 142).** Thus, pharmacy sales not being mentioned in Sec. 103 of the Tax Code as exempt from VAT, it should be deemed subject to VAT. The Latin maxims "*Expressio unius est exclusio alterius*" and "*Ubi lex non distinguit nec nos distinguere debemos*", where the law does not distinguish, we should not distinguish, under statutory construction, applies in the instant case.

We find no merit in the contention of the petitioner that respondent exceeded its legal authority when the latter provided in the implementing regulations (Revenue Regulations No. 5-87) that pharmacy sales not exceeding P200,000.00 in a twelve-month period are exempted from VAT. The authority of the Secretary of Finance to promulgate rules and regulations for the effective enforcement of our tax laws is imprinted in Sec. 245 of the Tax Code, which provides, thus:

> **Sec. 245. Authority of Secretary of Finance to promulgate rules and regulations.** - The secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.
>
> xxx xxx xxx

Furthermore, Sec. 103(w) of the Tax Code has delegated to the Secretary of Finance the authority to promulgate regulations to exempt those sales and/or services not specifically mentioned under this provision of law, to wit:

> **SEC. 103.** ***Exempt Transactions.*** -
>
> xxx xxx xxx
>
> (w) Sales and/or services performed by persons other than those mentioned in the preceding paragraphs whose annual gross sales and/or receipts do not exceed the amount prescribed in regulations to be promulgated by the Secretary of Finance which shall not be less than ₱100,000.00 or higher than ₱500,000.00.

Taking into account the above-mentioned provision of the Tax Code and the Supreme Court ruling in the case of **Eslao v. Commission on Audit, G.R. No. 108310, September 1, 1994,** 236 SCRA **161**, that "Administrative regulations and policies enacted by administrative bodies to interpret the law have the force of law and are entitled to great respect". We find and so declare that pharmacy sales, whether sold to in-patients or out-patients, should be subjected to value added tax.

With reference to the second issue, this Court, after a deliberate study of the evidence presented, has reached the inevitable conclusion that indeed the respondent erred in the computation of the total pharmacy sales of the petitioner for the year 1991. This Court was convinced by the evidence presented by the petitioner

(Exhibits "I" to "U") that "Cash Sales" account in its General Ledger which totalled P54,817,795.51 for the year 1991, included not only sales of pharmacy products, but also payment for other ancillary services of the hospital, such as its radiology and pathology department's earnings/sales, among others. It was further established by the petitioner that respondent was incorrect when it considered the account "Inventory-Drugs and Pharma" as in-patient pharmacy sales of the petitioner. Exhibits "W" to" II" of the petitioner shows that indeed the total amount of P66,878,377.39 represent petitioner's Inventory usages for the year 1991 and not petitioner's in-patient pharmacy sales, as claimed by the herein respondent.

We agree with the ratiocination of the petitioner that its pharmacy sales are recorded in its books under the account "Earns for Special Service". This is supported by evidence for the petitioner, specifically Exhibits "D" to "G", including its submarkings. Thus, the total pharmacy sales (in-patient and out-patient) for the year 1991 should only be P92,231,976.25, and not P121,696,172.82 per respondent's computation. The amount of P92,231,976.25 is computed in detail as follows, thus:

EARNS FROM SPECIAL SERVICE (PHARMACY - [513-1])

Month Covered	Gross Earning	Deduct Adjustment	Balance	Exh.
January 1991	P6,523,014.90	P34,296.43	P6,488,718.47	D-2 to D-2-c
February 1991	6,802,808.73	28,562.55	6,774,246.18	D-3 to D-3-b
March 1991	7,254,875.77	33,607.49	7,221,268.28	D-4 to D-4-b
April 1991	6,919,472.93	19,107.36	6,900,365.57	D-5 to D-5-b
May 1991	6,805,001.41	28,484.47	6,776,516.94	E-2 to E-2-b
June 1991	6,946,179.75	22,687.82	6,923,491.93	E-3 to E-3-b
July 1991	7,612,307.73	29,009.97	7,583,297.76	F-2 to F-2-b
August 1991	8,492,977.81	38,008.05	8,454,969.76	F-3 to F-3-b
September 1991	8,970.376.04	30,923.19	8,939,452.85	F-4 to F-4-b
October 1991	9,367,114.02	44,097.89	9,323,016.13	G-2 to G-2-b
November 1991	8,426,287.53	45,328.38	8,380,959.15	G-3 to G-3-b
December 1991	8,514,130.65	48,457.42	8,465,673.23	G-4 to G-4-b
TOTAL	P92,634,547.27	P402,571.02	P92,231,976.25	

The third issue in this case should be answered in the negative. The respondent did not err in not considering the petitioner's claimed deductions. "Pharmacy Out-Patient-Free Services and Discounts" (Exhibits "LL" and" MM", including its sub-markings) cannot stand to support its claimed deductions. The source documents where these summaries were taken were not offered as evidence for the petitioner. As regards "Sales Returns and Allowances", no evidence were offered to prove the same. Thus, this Court has no other recourse but to ignore all the claimed deductions.

Thus, the correct computation of the petitioner's deficiency value added tax on its 1991 pharmacy sales, is as follows:

TOTAL PHARMACY SALES	P92,231,976.25
Output tax due (10%)	P 9,223,197.62
Less: Input tax on Purchases	6,376,402.49
Balance	P 2,846,795.13
Less: Tax paid per return	102,020.77
Def. VAT	P 2,744,774.36
Add: 25% surcharge	686,193.59
TOTAL AMOUNT DUE AND COLLECTIBLE	P 3,430,967.95

WHEREFORE, premises considered, judgment is hereby rendered **DENYING** the herein petition. Petitioner is hereby **ORDERED TO PAY** the respondent Commissioner of Internal Revenue the amount of P3,430,967.95 as deficiency value-added tax on its pharmacy sales covering the period January 1, 1991 to December 31, 1991, inclusive of surcharge, plus 20% interest per annum from the date prescribed for payment until fully paid, pursuant to Section 249 of the Tax Code, as amended. No pronouncements as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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