REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

M. E. HOLDING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5772

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 12 2001

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DECISION

This case involves a claim for refund/tax credit in the amount of P562,522.00 for the taxable year 1996 arising from the alleged erroneous treatment of the 20% sales discounts granted to qualified senior citizens on their purchases of medicines as a deduction from gross income as prescribed by Revenue Regulations No. 2-94 instead of as tax credit as provided for in Republic Act No. 7432, otherwise known as the Senior Citizens Act.

Petitioner M.E. Holding Corporation is a domestic corporation organized and existing under the laws of the Philippines with principal office address at No. 7 Mercury Ave., Bagumbayan, Quezon City *(par. 1, Joint Stipulation of Facts).* It is a retailer of medicines and other pharmaceutical products. In 1996, it operated two (2) drug stores located at Session Road, Baguio City and the other at Magsaysay St., Baguio City as franchisees under the business name and style of "Mercury Drug" *(par. 2, Joint Stipulation of Facts)*. Petitioner is duly licensed to operate drug stores by the Bureau of Food and Drugs, the local government units where its drugstores are located, the Department of Trade and Industry and the Bureau of Internal Revenue *(par. 3, Joint Stipulation of Facts)*.

Petitioner allegedly granted 20% sales discounts to qualified senior citizens on their purchases of medicines on various dates during the taxable year 1996 amounting to P865,416.00. In compliance with Revenue Regulations No. 2-94, Petitioner then deducted said amount from its gross sales. Petitioner filed on April 15, 1997 its Annual Income Tax Return for tax year 1996 and the Annual Income Tax Return was filed by Petitioner under protest *(pars. 4 & 5, Joint Stipulation of Facts)*.

On December 29, 1997, (should be January 16, 1998, Annex C) petitioner filed with Respondent a claim for tax credit/refund for tax year 1996 in the amount of FIVE HUNDRED SIXTY TWO THOUSAND FIVE HUNDRED TWENTY TWO PESOS (P562,522.00) arising from the twenty percent (20%) sales discount granted by Petitioner to qualified senior citizens in compliance with Republic Act No. 7432 *(par. 6, Joint Stipulation of Facts)*. To date, Respondent has not granted Petitioner's claim for tax credit and has not acted upon the same until this date *(par. 7, Joint Stipulation of Facts)*.

It is the assertion of the Petitioner that Section 4 of R.A. No. 7432 clearly provides that the discounts granted to senior citizens should be claimed as tax credit not as deduction per Revenue Regulations No. 2-94. Thus, the instant claim, detailed as follows:

SALES, Net		P 97,569,898.00
Add: Cost of the 20% Discount to Senior Citizens		865,416.00
SALES, Gross		P 98,435,314.00
COST OF SALES		
Merchandise inventory, beg.	P 9,469,349.00	
Add: Purchases	91,404,418.00	
Total goods available for sale	100,873,767.00	
Less: Merchandise inventory, end	11,937,299.00	88,936,468.00
GROSS PROFIT		P 9,498,846.00
Miscellaneous Income		54,315,190.00
TOTAL INCOME		P 63,814,036.00
Less: Operating expenses		14,636,883.00
NET INCOME BEFORE INCOME TAX		P 49,177,153.00
INCOME TAX (35%)		P 6,038,117.00
Less: TAX CREDIT (Cost of the 20% Discount to Senior Citizens)		865,416.00
INCOME TAX PAYABLE		P 5,172,701.00
INCOME TAX ACTUALLY PAID		5,735,223.00
TAX REFUNDABLE/OVERPAID INCOME TAX		P 562,522.00

To bolster its claim, Petitioner presented both documentary and testimonial evidence. Respondent, however, was declared to have waived his right to present evidence for failure of his counsel to appear for four consecutive hearings (p. 136, CTA rec.).

Both parties agreed that the issues to be resolved in this case are:

1. Whether or not the 20% sales discount granted to senior citizens on their purchases of medicines should be treated as a 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 EIGHT HUNDRED SIXTY FIVE THOUSAND FOUR HUNDRED TEN PESOS (P865,410.00) sales discounts to senior citizens on their purchases of medicines in the year 1996; and

3. Whether or not Petitioner has applied the tax credit automatically to the succeeding year(s).

As regards the first issue, We have already ruled in several cases that the 20% sales discounts granted to senior citizens should be treated as tax credit and not as mere deduction from gross income (**Mercury Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5315, September 6, 2000; M.E. Holding Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5604, April 25, 2000; M.E. Holding Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5314, August 17, 1998).**

Proceeding to the second issue, a verification made by an independent CPA resulted to a finding that only P861,821.90 out of the total sales discounts of P865,410.00 was duly supported by cash slips (Exh. M-2). We agree with the report of the commissioned CPA (Exh. M) that the sales discounts of P861,821.90 granted by Petitioner to qualified senior citizens were indeed properly supported by cash slips and duly recorded in the Bureau of Food and Drugs (Exh. K) and Bureau of Internal Revenue (Exh. L) special books.

Finally, We come to the issue of whether or not Petitioner has validly applied the tax credit automatically to the succeeding year(s).

Records will reveal that Petitioner had no tax credit which can be automatically applied to the succeeding taxable year(s). Based on its 1996 annual income tax return (Exh. E), Petitioner even paid an additional income tax of P1,530,992.00 (Exh. E-2). Petitioner's excess income tax credit arose only when We issued the ruling that the sales discounts granted to senior citizens are to be treated as tax credit and not mere deductions from gross income. In other words, there is no way for Petitioner to apply said tax credit to any succeeding taxable year for the same can be claimed only by way of the present petition.

Nevertheless, although the Court of Appeals upheld Our ruling that the 20% sales discounts granted to senior citizens may be claimed as tax credit, said appellate court ruled that the amount to be claimed as tax credit should only be the direct cost or cost of sales of the 20% sales discounts and not the full amount of the discount **(Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946, October 19, 1999).**

Consequently, to arrive at Petitioner's 1996 overpaid income tax, We have first to add back the total 20% sales discounts granted to senior citizens in the amount of P865,416.00 which was previously deducted from its gross sales of P98,435,314.00. However, out of the P865,416.90 sales discounts granted, only the amount of P861,821.90 was validly supported by documents (Exh. M). Further, pursuant to the ruling in the Elmas Drug case, only the direct cost of the 20% sales discounts shall be allowed as tax credit. *Ergo,* We have to divide the total cost of sales of P88,936,468.00 by the total gross sales of P98,435,314.00 multiplied by P861,821.90 to determine the correct amount of allowable 20% sales discounts which is P778,657.50. After which, We have to add the taxes actually paid amounting to P5,735,222.69 resulting to a total tax credit of P6,513,880.19. Then We have to apply said total tax credit to its 1996 income tax due with amount of P6,038,118.00 to finally arrive at the overpaid income tax for 1996 in the amount of P475,762.19.

IN VIEW OF ALL THE FOREGOING, Petitioner's claim for refund/tax credit is hereby **GRANTED** but in a reduced amount of P475,762.19, summarily computed as follows:

SALES, Net			P 97,569,898.00
Add: Cost of 20% Discount Given to Senior Citizens			865,416.00
SALES, Gross			P 98,435,314.00
COST OF SALES			
Merchandise inventory, beg.	P 9,469,349.00		
Add: Purchases	91,404,418.00		
Total goods available for sale	100,873,767.00		
Less: Merchandise inventory, end	11,937,299.00		88,936,468.00
GROSS PROFIT			P 9,498,846.00
Miscellaneous Income			54,315,190.00
TOTAL INCOME			P 63,814,036.00
Less: Operating expenses			14,636,883.00
NET INCOME			P 49,177,153.00
Less: Income subject to final tax			
a). Dividends	P 27,631,925.00		
b). Interest	4,293,461.00		31,925,386.00
NET TAXABLE INCOME			P 17,251,767.00
TAX DUE (P17,251,767.00 X 35%)			P 6,038,118.00
Less: Tax Credit (Cost of the 20% sales discount given to senior citizens – P88,936,468.00/P98,435,314.00 x P861,821.90)		P 778,657.50	
Tax Actually Paid			
a). Quarterly payments	P 3,091,184.62		
b). Creditable tax withheld	1,113,046.07		
c). Per final adjustment return	1,530,992.00	5,735,222.69	P 6,513,880.19

AMOUNT REFUNDABLE	P 475,762.19

Accordingly, Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** or in the alternative **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of P475,762.19, representing overpaid income tax for the year 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

CONCURRING:

RAMON O. DE VEYRA
Associate Judge

DISSENTING:

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance wi h Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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DISSENTING OPINION

The majority granted the amount of P475,762.19 in favor of Petitioner. With all due respect to the opinion of my esteemed colleagues, I hereby express my dissent.

Under Section 4(a) of Republic Act No. 7432, otherwise known as the "Senior Citizens Law," the grant of the twenty percent (20%) sales discounts to qualified senior citizens on their purchases of goods from private establishments mentioned in said subsection have two (2) useful applications, to wit:

1. the grant of the twenty percent (20%) sales discounts on purchases by qualified senior citizens; and

2. that private establishments mentioned in said subsection (a) may claim the cost of the twenty percent (20%) sales discounts as tax credit.

Also, under Section 100(d)(3) of the Tax Code of 1995, there is provided the following:

> "(3) Sales returns, allowances and sales discounts. –
>
> x x x x x x x x x
>
> Sales discounts granted and indicated in the sales invoice at the time of sales may be excluded from gross sales within the same quarter."

Proceeding from the aforequoted provisions of law, I firmly believe that the basis of the sales subject to income tax shall be the amount exclusive of the twenty percent (20%) sales discounts, a position which is in sharp conflict with the opinion of the majority.

In the matter involving the computation of the cost of the twenty percent (20%) sales discounts to be used as tax credit or tax refund, no conflict of opinion among the Judges existed. Accordingly, the said cost of the twenty percent (20%) sales discounts may be computed, thus:

Percentage of Cost of Sales:	
Cost of Sales divided by Gross Sales or P88,936,468.00 divided by P98,435,314.00	90.3501644%
Cost of 20% Sales Discounts:	
Adjusted 20% Sales Discounts	P 861,821.90
Multiplied by Percentage of Cost of Sales per above	90.3501644%
Cost of 20% Sales Discounts as Tax Credit or Refund	P 778,657.50

However, inasmuch as the amount of Tax Credit or Tax Refund prayed for by the Petitioner in its Petition for Review is only P562,522.00 then only such amount shall be allowed as Tax Credit or Tax Refund. A review of petitioner's annual income tax due thereon in the amount of P5,735,223.00 was paid in full without such Tax Credit or Tax Refund being applied as among the mode of payments. Accordingly, the income tax due for taxable year 1996 was paid in full, thus:

Gross Sales	P	98,435,314.00
Less: 20% Sales discount		865,416.00
Net Sales	P	97,569,898.00
Less: Cost of Goods Sold		88,936,468.00
Gross Profit	P	8,633,430.00
Less: Operating Expenses		14,636,883.00
Net Operating Loss	P	(6,003,453.00)
Add: Miscellaneous Income		
1. Rent - Section C, Schedule 2, ITR		17,211,403.00
2. Various - Section C, Schedule 3, ITR		5,178,401.00
Total		22,389,804.00
Net Taxable Income	P	16,386,351.00
Income Tax Due Thereon at 35%	P	5,735,223.00
Less: Income Tax Payments Per ITR		
1. 1st, 2nd & 3rd Quarterly		3,091,184.62
2. Creditable Income Tax Paid		1,113,046.07
3. Final Income Tax Paid on April 15, 1997		1,530,992.31
Total Tax Payments	P	5,735,223.00
Balance	P	-0-
Refundable Amount	**P**	**562,522.00**

Clearly, the conclusion is inescapable that the cost of the twenty percent (20%) sales discounts which should have been applied as a tax credit against the income tax due for the period constitute as an erroneously or illegally paid taxes to the government which under Sections 204(3), in relation to Section 230 of the National Internal Revenue Code, are refundable.

WHEREFORE, in view of the foregoing, I vote to grant the amount of P562,522.00 in favor of Petitioner.

AMANCIO Q. SAGA
Associate Judge