REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BICOLANDIA DRUG CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7210

Members:

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

Promulgated:

JUL 23 2007; 9:10 AM

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DECISION

BAUTISTA, *J.*:

This Petition for Review seeks the issuance of a tax credit certificate in the amount of P8,133,836.59 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]

Bicolandia 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 fifteen (15) drug stores which were duly licensed by the Bureau of Food and Drugs (BFAD), the Department of Trade and Industry, the

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

Bureau of Internal Revenue (BIR), and the local government units where its drugstores are located.[2]

For the year 2002, petitioner allegedly granted twenty percent (20%) sales discounts to qualified senior citizens on their purchases of medicines in the total amount of P8,133,836.59, in compliance with Republic Act No. 7432 and its Implementing Rules and Regulations.[3]

In its 2002 Annual Income Tax Return (ITR) filed on April 15, 2003,[4] petitioner supposedly treated the 20% sales discounts of P8,133,836.59 as prepaid tax credit.

On April 13, 2005, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of P8,133,836.59, equivalent to the 20% sales discounts it purportedly granted to qualified senior citizens for 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:

> "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."

After trial and petitioner's submission of its Memorandum on February 15, 2007, the case was submitted for decision on May 14, 2007. Respondent failed to submit his Memorandum.

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[2] Paragraphs 1, 2 and 3, Joint Stipulation of Facts, Records, page 59
[3] Paragraph 5, Petition for Review, Records, page 2
[4] Annex "A", Petition for Review
[5] Annex "C" Petition for Review; paragraph 4, Joint Stipulation of Facts, Records, page 52

In their Joint Stipulation of Facts, the parties agreed on the following issues to be resolved by 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 P8,133,836.59 sales representing the discounts it granted to senior citizens on their purchases of medicines in the year 2002."

Anent the first issue, Section 4(a) of R.A. No. 7432 grants to qualified senior citizens 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; with a proviso that **private establishments may claim the cost as tax credit**.

On the other hand, Section 2(i) and 4 of Revenue Regulations No. 2-94 provide that **the sales discounts 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.

This Court has consistently ruled that "the cost of the 20% discount shall not be treated as deduction from the gross income of the petitioner nor deducted from its gross sales for VAT or other percentage tax purposes. The benefit that can be derived by taxpayers is the privilege of claiming these discounts as tax credit and no longer as deductions as what other taxpayers have done. They cannot avail of tax credit and claim said discounts as deductions at the same time because this would be tantamount to granting them benefits that are already disproportionate to the obligations imposed upon them by virtue of said law. This is to make clear for both the taxpayers and respondent that the tax credit privilege takes the place of claiming these discounts as deductions pursuant to this Court's stand that Section 2(i) of Revenue Regulations No. 2-94 is null and void and it is Section 4(a) of RA 7432 that will apply in cases of this nature."[6]

The Supreme Court likewise settled the matter in the case of **Commissioner of Internal Revenue vs. Central Luzon Drug Corporation,**[7] when it ruled that:

> **"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.**" (*Emphasis supplied*)

Besides, the High Tribunal already declared in the case of **Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (formerly known as Elmas Drug Co.)** that Revenue Regulations No. 2-94 is void for its failure to conform to the law it sought to implement.[8]

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

The Court now proceeds to the issue of substantiation.

Petitioner, in order to substantiate its sales to senior citizens and the corresponding 20% sales discounts it granted to senior citizens, presented the following pieces of evidence:

DOCUMENT	**EXHIBIT**
• Summary of the amount of sales discount granted by petitioner to senior citizens for 2002	V
• Certification of Independent CPA	Y

[6] Baliuag Drug Corp. vs. Commissioner of Internal Revenue(CTA Case No. 6537, November 25, 2004), quoting the decision of the CTA in the case of Del Rosario Drug Corporation vs. Commissioner of Internal Revenue (CTA Case No. 5357, April 6, 1998)
[7] G.R. No. 159647, April 15, 2005
[8] G.R. No. 148083, July 21, 2006

dated April 21, 2006	
• Cash Slips	W
• Sample of BIR and BFAD Special Record Books	X

In the report dated April 21, 2006 of the commissioned independent CPA, only the amount of P5,186,833.74 was verified to have been duly substantiated by cash slips out of petitioner's claimed 20% sales discounts granted to senior citizens. Notwithstanding the substantiation of the amount of P5,186,883.74, the Court must deny petitioner's claim.

Petitioner alleges that it reported and treated the 20% sales discounts to senior citizens as pre-paid tax credit instead of deductions from its gross income. Thus, gross amount of its sales, inclusive of the 20% discount, to senior citizens should have formed part of its taxable income. However, this Court cannot ascertain from the records whether petitioner's sales to senior citizens (gross of the 20% sales discounts) were actually declared as part of the sales amount of P434,089,492.00 as reflected in its annual income tax return and audited financial statements for taxable year 2002.[9] Petitioner merely presented a *Schedule of Sales (Net) for 2002,*[10] *Schedule of Prepaid Tax-OSCA for 2002,*[11] and sample of its BIR and BFAD *Special Record Books.* Petitioner should have submitted its detailed general ledger, cash receipts book, sales book or any other document that will establish that petitioner's reported sales of P434,089,492.00 for 2002 included its gross sales (inclusive of the 20% sales discounts) to senior citizens.

It must be emphasized that petitioner is claiming a tax credit certificate representing the 20% sales discounts it granted to its qualified senior citizen clientele. Hence, it is necessary for petitioner to show that its sales to senior citizens (inclusive of the 20% sales discounts) were indeed reported as part of its taxable income for 2002 and the 20% sales discounts were really treated as prepaid tax. A claim for refund is in the nature of a claim

[9] Exhibits "C" and "D"
[10] Exhibit "U"
[11] Exhibit "V"

for exemption, hence, should be construed *strictissimi juris* against the taxpayer.[12] Inasmuch as petitioner failed to discharge its burden of proof, its claim must necessarily fail.

WHEREFORE, 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

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[12] Anno Domini Drug, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6929, July 20, 2006