REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CAGAYAN VALLEY DRUG CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7209

Members:

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

Promulgated:

AUG 10 2007 9:20 am

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DECISION

CASANOVA, J.:

Before Us is a Petition for Review seeking the issuance of tax credit certificate in the amount of P3,018,011.66 representing the allegedly unused tax credits earned for the taxable year 2002 arising from the twenty percent (20%) sales discount granted by petitioner to senior citizens on their purchases of medicines as provided for in Republic Act (RA) No. 7432[1].

The antecedents facts giving rise to the controversy at bar are as follows:

[1] Otherwise known as "An Act to Maximize the Contiribution of Senior Citizens to Nation Building, Grant Benefits, and Special Privileges and for Other Purposes".

Petitioner 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[2].

Respondent is the duly appointed Commissioner of Internal Revenue with office address at Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

In 2002, petitioner operated seven (7) drug stores located in Tuguegarao Gonzaga; Roxas, Isabela; Cauayan, Maharlika; Tuguegarao, Gomez; Ilagan, Maharlika; Tugugegarao, Delfino and Aparri Rizal. It is licensed to operate the said drug stores by the Bureau of Food and Drugs (BFAD), the local government units where its drugstores are located and the Department of Trade and Industry (DTI)[3].

From January to December of the same year, petitioner granted twenty percent (20%) sales discounts to qualified senior citizens on their purchases of medicines in compliance with RA No. 7432 and its Implementing Rules and Regulations. The amount of sales discount granted by petitioner amounted to P3,018,011.66.

Petitioner treated the twenty percent (20%) discount granted to senior citizens as prepaid tax credit thus, when it filed its *Annual Income Tax Return* for the taxable year 2002[4] on April 15, 2003, the twenty percent (20%) discount was reflected as "Creditable Tax Withheld" in the amounts of P2,161,962.00 and P856,050.00 for the first three quarters and fourth quarter respectively, resulting to

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[2] Joint Stipulation of Facts (JSF) par 1, rollo 55
[3] JSF pars 2 & 3, rollo page 55
[4] Exhibit C

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the aggregate amount of P3,018,012.00[5]. The pertinent portions of petitioner's 2002 Annual Income Tax Return are shown as follows:

Aggregate Income Tax Due	470,214.00
Less: Tax Credits	
Prior Year's Excess Credits	3,043,413.00
Creditable Tax Withheld for the First Three Quarters	*2,161,962.00*
Creditable Tax Withheld for the Fourth Quarter	*856,050.00*
Total Tax Credits	6,061,425.00
Tax Overpayment	5,591,211.00

On April 13, 2005, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of P3,018,011.66 equivalent to the twenty percent (20%) sales discounts granted to qualified senior citizens[6] for the year 2002.

On April 14, 2005, petitioner filed the instant petition.

Respondent, in his Answer admitted by this Court in a Resolution dated June 24, 2005, interposed the following special and affirmative defenses:

> "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 is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
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> 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."

On September 14, 2005, petitioner filed a motion requesting to avail the services of an independent certified public accountant (CPA) in the presentation of

[5] Petitioner's claim amounts to P3,018,011.66. The difference is due to the rounding off.
[6] JSF par. 4, rollo 55

voluminous documents pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97. The motion was granted in open court on September 27, 2005 and Mr. Alfonso Katigbac was commissioned as independent CPA.

The case was submitted for decision in a Resolution dated April 4, 2007 after considering petitioner's Memorandum sans respondent's Memorandum.

1. Whether the 20% sales discount to senior citizens on their purchase of medicines should be treated as tax credit deductible from the tax due as provided under RA 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 the total amount of P3,018,011.66 representing the discounts it granted to senior citizens on their purchases of medicines in the year 2002.

With respect to the first issue, the pertinent laws are RA No. 7432 and Revenue Regulations (RR) No. 2-94, partly quoted herein as follows:

"***R.A. No. 7432***

SECTION 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 establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: *Provided*, That private establishments may claim the cost as tax credit; *(Emphasis supplied)*

Revenue Regulations No. 2-94

SECTION 2. *Definitions.* — For purposes of these regulations:

x x x x

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 income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes. *(Emphasis supplied)*

x x x x

SECTION 4. *Recording/Bookkeeping Requirement for Private Establishments.* — Private establishments, *i.e.*, transport services, hotels and similar lodging establishments, restaurants, recreation centers, drugstores, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, giving 20% discounts to qualified senior citizens are required to keep separate and accurate record of sales made to senior citizens, which shall include the name, identification number, gross sales/receipts, discounts, dates of transactions and invoice number for every transaction.

The amount of 20% discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of the VAT and other percentage taxes. *(Emphasis supplied)*"

A reading of the above laws reveals a contradiction as to the treatment of the twenty percent (20%) sales discount granted by private establishments to senior citizens. RA No. 7432 provides that the 20% discount can be claimed as tax credit while RR No. 2-94 mandates that it should be treated as a deduction from gross income.

The contradiction at hand had already been put to rest by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*[7] which ruled:

> "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 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 grant are void. Basic is the rule that administrative regulations cannot amend or revoke the law.
>
> x x x x
>
> ***Sections 2.i and 4 of Revenue Regulations No. 2-94 Erroneous***
>
> RA 7432 specifically allows private establishments to claim as tax credit the amount of discounts they grant. In turn, the Implementing Rules and Regulations, issued pursuant thereto, provide the procedures for its availment. To deny such credit, despite the plain mandate of the law and the regulations carrying out that mandate, is indefensible.
>
> x x x x
>
> ***Reason for the Senior Citizen Discount: The Law, Not Prompt Payment***
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> A distinguishing feature of the implementing rules of RA 7432 is the private establishment's outright deduction of the discount from the invoice price of the medicine sold to the senior citizen. x x x x Although prompt payment is made for an arm's-length transaction by the senior citizen, the real and compelling reason for the private establishment giving the discount is that the law itself makes it mandatory.
>
> What RA 7432 grants the senior citizen is a mere discount privilege, not a *sales discount* or any of the above discounts in particular. Prompt payment is not the reason for (although a necessary consequence of) such grant. To be sure, the privilege enjoyed by the senior citizen must be equivalent to the *tax credit*

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

benefit enjoyed by the private establishment granting the discount. Yet, under the revenue regulations promulgated by our tax authorities, this benefit has been erroneously likened and confined to a *sales discount*.

x x x x

Sections 2.i and 4 of Revenue Regulations No. (RR) 2-94 define *tax credit* as the 20 percent discount deductible from *gross income* for *income tax* purposes, or from *gross sales* for VAT or other percentage tax purposes. In effect, the *tax credit* benefit under RA 7432 is related to a *sales discount*. This contrived definition is improper, considering that the latter has to be deducted from *gross sales* in order to compute the *gross income* in the *income statement* and cannot be deducted again, even for purposes of computing the *income tax*.

When the law says that the cost of the discount may be claimed as a *tax credit*, it means that the amount -- when claimed -- shall be treated as a reduction from any tax liability, plain and simple. The option to avail of the *tax credit* benefit depends upon the existence of a tax liability, but to limit the benefit to a *sales discount* -- which is not even identical to the discount privilege that is granted by law -- does not define it at all and serves no useful purpose. The definition must, therefore, be stricken down.

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.

x x x x

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." (Citations omitted)

Clearly from the above pronouncement, the twenty percent (20%) discount granted to senior citizens shall be treated as **tax credits**. Therefore, it follows that private establishments granting the twenty percent (20%) senior citizen's discount shall be legally entitled to the issuance of tax credit certificates representing any unused tax credits arising from the said discount.

Going now to the second issue; petitioner, among others, submitted the following pieces of evidence to prove its claim:

1. Annual Income Tax Return for the taxable year 2002[8];

2. *"Schedule of Sales (NET) for the year 2002"*, described as the summary of petitioner's sales for the year 2002 as certified true and correct by the Officer in Charge-Finance, Romeo David[9];

3. *"Summary of Prepaid Income Tax (OSCA) for the year 2002"*, described as the summary of sales discount granted by petitioner to senior citizens for the year 2002 as certified true and correct by the Officer-in-Charge, Romeo David[10];

4. Cash Slips evidencing the purchases of medicines by senior citizens for the year 2002[11]; and

5. Sample of BIR and BFAD Special Record Books prepared by the different drug stores of petitioner for sales discounts granted to senior citizens for the year 2002[12].

Upon a thorough review and examination of the various cash slips, in relation to petitioner's *"Summary of Prepaid Income Tax (OSCA) for the year 2002"*[13] and the

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[8] Exhibit C
[9] Exhibit M
[10] Exhibit N
[11] Exhibit O with sub-markings
[12] Exhibit P with sub-markings
[13] Exhibit N

Special Record Books[14] for sales discount granted by petitioner to senior citizens in 2002, this Court agrees with the findings of the commissioned CPA as enunciated in his report[15] dated November 25, 2005, summarized as follows:

		Branch	Amount per Book	Amount per Audit	Variance
1	515	Tuguegarao College Ave.	P 455,807.23	P 444,322.64	P 11,484.59
2	585	Roxas Syquia	102,662.03	74,207.99	28,454.04
3	610	Cauayan Maharlika	626,153.82	598,464.43	27,689.39
4	614	Tuguegarao Gomez	416,856.43	415,566.67	1,289.76
5	627	Ilagan Maharlika Highway	562,959.33	548,106.61	14,852.72
6	633	Tuguegarao Delfino	834,096.84	783,501.41	50,595.43
7	649	Aparri Cagayan	12,079.07	11,864.57	214.50
		Total Sales Discount	**P3,010,614.75**	**P2,876,034.32**	**P 134,580.43**

Also, the commissioned CPA submitted the following observations:

"1.) The cash slips on file were either duplicates or triplicate;

2.) There were missing cash slips included in the Special Record Books but which were disallowed per audit;

3.) In addition, there were cash slips

a. not included in the Special Record Books, but considered per audit;

b. with no senior citizen's ID number and name hence, disallowed per audit;

c. which were unreadable or illegible; hence, disallowed per audit."

As aptly observed, contrary to petitioner's claim that it is entitled to the issuance of tax credit certificate in the amount of P3,018,011.66, only the amount of

[14] Exhibit P with sub-markings
[15] Exhibit R

P2,876,034.32 was found to be sufficiently substantiated by proper cash slips. This means that the proper subject for the issuance of tax credit certificate amounts to P2,876,034.32 only.

Nonetheless, in order to be entitled to its claim, petitioner still has to prove that it declared the sales (gross of the 20% discount) it rendered to senior citizens in its Income Tax Return as part of its taxable income for 2002.

Going through the pieces of evidence submitted, the *Annual Income Tax Return*[16] for the taxable year 2002 shows that petitioner reported sales in the amount of P238,763,286.00 under item 14 pertaining to *"Sales/Revenue/Receipts/Fees (Sch. 1)"*. The said amount was likewise reflected in petitioner's *Audited Financial Statements for the year ended December 31, 2002*[17]. However, petitioner failed to show which part of the reported sales pertains to those made to senior citizens. Petitioner should have submitted a detailed breakdown of its daily net sales as reflected in its detailed General Ledger, Sales Book, and Cash Receipts Book or any other document which would enable this Court to verify or trace whether the daily gross sales to senior citizens as recorded in the *Special Record Books* actually formed part of the gross sales reported in the 2002 Annual Income Tax Return.

Apparently, petitioner's claim must therefore fail.

Long standing is the 'general rule that claimants of tax refunds bear the burden of proving the factual basis of their claims. This is because tax refunds are in the nature of tax exemptions, the statutes of which are construed *strictissimi juris*

[16] Exhibit C
[17] Exhibit D

against the taxpayer and liberally in favor of the taxing authority'[18]. Failure of a taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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
Chairman, First Division

[18] Philippine Phosphate Fertilizer Corporation vs. CIR [G.R. No. 141973. June 28, 2005.]