REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TROPICAL HUT FOOD MARKET, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5600

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 08 2001 Margaret

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DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate in the amount of P677,764.00 allegedly representing overpaid corporate income tax for the year 1995.

The facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines (Exh. A). It "operates several branches as a retailer of pharmaceutical products and fast food stores that sell hamburgers, beverages and other food items under the business name and style of "Tropical Hut" and as such, it is duly licensed to operate drug and fast food stores by the Bureau of Food and Drugs, the local government units where the drugs and fast food stores are located, the Bureau of Internal Revenue and the Department of Trade and Industry" (CTA Resolution, 11/23/98, p. 198, CTA records).

During the calendar year 1995, Petitioner granted 20% discount totalling P1,042,714.00 to qualified senior citizens on the latter's purchases of medicines from its drugstores and dine-in purchases of food and beverages from its fastfood stores/coffee shops, pursuant to the provisions of Republic Act (RA) 7432, otherwise known as "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes." Under Section 4(a) of the said law, the senior citizens shall be entitled to "the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and purchase of medicines anywhere in the country; Provided, That private establishments may claim the cost as tax credit;" x x x

On April 15, 1996, Petitioner filed its Corporation Annual Income Tax Return for the calendar year ended December 31, 1995 (Exh. C), claiming the discount granted to senior citizens as a deduction from its gross income, but this time in accordance with Revenue Regulations No. 2-94, implementing Sec. 4 of RA 7432, to state:

> "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, recreatioı centers, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, <u>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</u>." (underscoring supplied)

According to Petitioner, it was only forced to claim the discount as a deduction from its gross income for it believed that the above-quoted implementing regulation is erroneous. Thus, on the same day it filed its income tax return, it filed a claim for tax refund or credit of its overpaid income tax for the taxable year 1995 in the amount of P677,764.00 (Exh. D) computed as follows:

SALES, net	P1,714,906,095
Add: Cost of 20% discount to Senior Citizen	1,042,714
SALES, gross	P1,715,948,809

COST OF SALES:		
Inventory, beg.	P 177,107,269	
Purchases	1,371,630,561	
Inventory, end	-173,729,008	1,375,008,822
GROSS PROFIT		P 340,939,987
Miscellaneous Income		66,245,184
TOTAL INCOME		P 407,185,171
Operating Expenses		364,742,758
NET INCOME BEFORE INCOME TAX		P 42,442,413
Income Tax Payable		14,854,845
Less: Tax Credit (Cost of 20% Discount to Senior Citizens)	P 1,042,714	
Tax Actually Paid	14,489,895	15,532,609
TAX REFUNDABLE		P -677,764

On December 27, 1996, Petitioner filed again a similar letter-request for the refund/credit of its overpaid income tax (Exh. E). As there was no action on the part of herein Respondent and the two-year prescriptive period was about to lapse, the instant petition was filed on April 6, 1998.

In his Answer filed through registered mail on May 27, 1998, Respondent raised the following Special and Affirmative Defenses:

> "6. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 7. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action."

The sole issue presented by both parties for our consideration is whether or not the 20% sales discount given to qualified senior citizens on their purchases of medicines and/or food items from the Petitioner should be treated as a tax credit deductible from the tax due pursuant to RA No. 7432 or merely as a deduction from gross income for income tax purposes under Revenue Regulations No. 2-94.

In its Memorandum, Petitioner asserts that Respondent's definition of the term "tax credit" in paragraph (i) of Revenue Regulations No. 2-94 is contrary to Section 4, par. (a) of Republic Act No. 7432; that the intent of Congress is to treat the sales discounts granted to senior citizens as tax credit instead of a mere deduction from gross income and that Sec. 2, par. (i) of Revenue Regulations No. 2-94, a mere implementing administrative regulation, cannot modify, alter or amend the clear mandate of Section 4 of Republic Act No. 7432 which it seeks to implement.

On his part, Respondent argues that the provision under Republic Act No. 7432 which states that the 20% sales discounts on purchases of medicines by senior citizens be treated as a tax credit is a misnomer as it runs counter to the solemn duty of the government to collect taxes. Respondent further contended that the legal provision in question (Sec. 4 of RA 7432) employs the word "may" in the clause "PROVIDED, that private establishments may claim the cost as tax credit" implying that the availability of the remedy of tax credit is not absolute and mandator, it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if it so chooses neither does it impose a duty on the part of the government to sit back and allow an important facet of tax collection to be at the sole control and discretion of the taxpayer (citing BIR Ruling 0667-95 dated April 11, 1995). Lastly, Respondent maintains that in Statutory Construction, in cases of ambiguities, the principle that the contemporaneous construction of a statute given by executive officers of the government whose duty is to execute it, is entitled to great respect and should ordinarily control the construction.

We find for the Petitioner.

The issue presented has already been addressed by this Court in a number of analogous cases elevated before Us, the latest of which is *CTA Case No. 5612 entitled Mercury Drug Corporation vs. Commissioner of Internal Revenue, promulgated January 9, 2000,* where We ruled:

> "A cursory review of the wordings of Section 4 of Republic Act No. 7432 would reveal that the law literally intended the cost of the 20% discount to be claimed as *tax credit* by private establishments. We could not see any plausible reason for the respondent to interpret the phrase in a different way. The discount being available for tax credit as stated in the law cannot be made incoherent to mean that such discount be utilized instead as a deduction from gross income and from gross sales as what is provided in RR No. 2-94.
>
> To be valid, an administrative regulation must not be in contravention but should conform to the standards that the law prescribes. (*Tayug Rural Bank vs. Central Bank 146 SCRA 120*). Its promulgation must be authorized by the legislature. (Philippine Administrative Law, Cruz, 1994 ed., p. 32)
>
> RR No. 2-94 which engraved a new meaning to the phrase "tax credit" as referring to the 20% discount which is deductible from gross sales is patently incongruous and a deviation from the plain intendment of the law. It is even repugnant to the common dictionary acceptation of said phrase.
>
> In declaring that the provisions of RA 7432 prevail over Revenue Regulations No. 2-94, it is important to point out 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." (citing **Del Rosario Drug Corporation vs. CIR, CTA Case No. 5357, April 6, 199**

> **Vas Salus Drug Corporation vs. CIR, CTA Case No. 5509, Nov. 26, 1999, Baliuag Drug Corporation vs. CIR, CTA Case No. 5365, May 13, 1998, M.E. Holding Corporation vs. CIR, CTA Case No. 5314, Aug. 17, 1998,** and **Trinity Franchising and Management Corp. vs. CIR, CTA Case No. 5313, Aug. 18, 1998**).

In fact, the Court of Appeals has affirmed said ruling in the case of *Commissioner of Internal Revenue versus Elmas Drug Corporation, CA-G.R. SP No. 49946 promulgated last October 19, 1999*:

> "Where the law is very clear, there is no room for interpretation. Section 4 of Republic Act 7432 clearly provides that the cost of the 20% discount may be claimed by Respondent as tax credit and there is nothing more to interpret.
>
> The Court of Tax Appeals, in its decision dated August 27, 1998 correctly ruled that the direct cost or the cost of sales of the 20% discount given to senior citizens is deductible as tax credit."

In the said case, however, the Court of Appeals passed upon the question of what should be given as tax credit: the full amount of the 20% discount or the cost of the 20% discount, thus:

> "Petitioner further argued that Section 4(a) of RA 7432 provides that private establishments may claim the cost of the 20% discount as tax credit. However, if the "real intention" of our legislators was to treat the full amount of the 20% discount as tax credit, it could have done so. Sadly, the final wordings of RA 7432 still mention the term "cost" as tax credit.
>
> Thus, the cost of the 20% discount represents the actual amount spent by drug corporations in complying with the mandate of RA 7432. Working on this premise, it could not have been the intention of the lawmakers to grant these companies the full amount of the 20% discount as this would be extending to them more than what they actually sacrificed when they gave the 20% discount to senior citizens.
>
> In this regard, WE AGREE with the Petitioner.
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> x x x x x x x x x

Perusal of the provisions of the law provides for the term "cost" without any distinction and therefore, shall be interpreted as such. As a general rule, the intent of the legislature to be ascertained and thereafter given effect is the intent expressed in the language of the statute. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

Section 4 (a) of R.A. 7432 clearly provides that private establishments, like the respondent in the case may claim the cost of the 20% discount as tax credit. If indeed the real intention of the legislators was to treat the full amount of the 20% discount as tax credit as argued by the Respondent, why then would the final wordings of the law be "Provided, that private establishments may claim the COST as tax credit." (underscoring supplied).

We, therefore, proceed to the amount to which Petitioner is entitled on the basis of the evidence presented.

The auditing firm, Vicente E. Reyes and Associates, through its Partner, Mr. Rene Amby Reyes, was commissioned by this Court pursuant to CTA Circular 1-95, as amended, to verify the accuracy of Petitioner's claim for refund. In its first and second reports dated July 9, 1999 and September 9, 1999, respectively, (Exhs. M & P, including sub-markings) the auditing firm certified that out of the total amount of 20% sales discounts to senior citizens of P861,351.76 shown in Petitioner's "1995 Summary of Senior Citizens' Discounts" (Exh. N) only the amount of P852,235.78 was properly supported by cash slips broken down as follows:

	20% Sales Disc. to Senior Citizens Per Petitioner's Summary (Exh. N)	20% Sales Disc. to Sr. Citizens w/ Cash Slips Per Vicente E. Reyes & Asso. Verification		
		1st Report (Exh. M)	2nd Report (Exh. P)	Total Amount w/ Cash Slips
Supermarket Division	P 726,011.88	P 627,951.91	P 93,906.68	P 721,858.59
Coffee Shop Division	135,339.88	130,377.19		130,377.19
Total:	P 861,351.76	P 758,329.10	P 93,906.68	P 852,235.78

However, an examination of the said reports together with Petitioner's 1995 Summary of Senior Citizens' Sales Discounts (Exh. N) and cash slips (Exh. O including sub-markings) reveals that the amount of P7,948.49 (detailed per Annexes A & B) should be disallowed from the said auditing firm's verified amount of P852,235.78. Thus, only the resulting amount of P844,287.29 (see Annex A, p. 12) represents valid 20% sales discounts given by Petitioner to senior citizens for the year 1995 which shall become the basis for computing its 1995 allowable tax credit.

Records show that Petitioner was able to establish that it deducted from its 1995 gross sales the amount of P1,042,714.00 representing 20% sales discounts to senior citizens resulting to a net sales of P1,714,906,095.00. The latter amount is indicated in Petitioner's 1995 audited financial statements as "Sales, Net" (Exh. B-1; TSN, October 20, 1998, pages 14 & 15) and in Section C, Schedule 1 of its 1995 annual income tax return as "Gross Sales During The Year" (Exh. C-2; TSN, October 20, 1998, pages 16 & 17). As a result of said deduction, Petitioner paid an income tax due of P14,489,895.00 on taxable income of P41,399,699.00. The former amount represents the sum of its: a) 1995 first three quarterly income tax payments of P2,907,042.14; b) creditable taxes withheld during 1995 of P1,300,096.42; and c) final income tax payment of P10,282,756.44 (Exh. C).

In computing Petitioner's 1995 overpaid income tax, the total 20% sales discounts to senior citizens of P1,042,714.00 previously deducted by Petitioner from its gross sales shall be added back to its net sales of P1,714,906,095.00. This is necessary because the 20% sales discounts to senior citizens is no longer to be treated as a deduction from gross income but rather as a tax credit. However, since only the direct cost of the 20% sales discounts to senior citizens may be allowed as tax credit and not the entire amount of the discount granted, it follows that Petitioner may claim only the amount of P676,536.77 as tax credit, representing the cost of the substantiated amount of P844,287.29 (see Annex A, p. 12), detailed as follows:

Net Sales	P 1,714,906,095.00
Add: 20% Sales Discounts to Senior Citizens	1,042,714.00
Gross Sales	P 1,715,948,809.00
Cost of Sales	P 1,375,008,822.00
Divided by Gross Sales	P 1,715,948,809.00
Percentage of Cost of Sales to Gross Sales	80.1311097%
Multiplied by amount of 20% Sales Discounts to Senior Citizens for 1995 duly substantiated by cash slips (Annex B)	P 844,287.29
Allowable Tax Credit	P 676,536.77

A re-computation, therefore, of Petitioner's 1995 income tax liability using the above figure of P676,536.77 representing cost of the 20% sales discounts to senior citizens as tax credit shows that Petitioner actually overpaid its 1995 income tax by P311,586.77 as shown below:

Net Sales		P 1,714,906,095.00
Add: 20% Sales Discount to Senior Citizens		1,042,714.00
Gross Sales		P 1,715,948,809.00
Less: Cost of Sales		
Merchandise inventory, beginning	P 177,107,269.00	
Purchases	1,371,630,561.00	
Total merchandise available for sale	P 1,548,737,830.00	
Less: Merchandise inventory, end	173,729,008.00	1,375,008,822.00
Gross Profit		P 340,939,987.00
Add Miscellaneous Income		66,245,184.00
Total Income		P 407,185,171.00
Less: Operating Expenses		364,742,758.00
Net Income before Income Tax		P 42,442,413.00
Income Tax Due		P 14,854,845.00
Less: Tax Credits/Payments		

1.) 1st, 2nd & 3rd quarterly payments	P	2,907,042.14	
2.) Creditable taxes withheld		1,300,096.42	
3.) Final income tax payment		10,282,756.44	
4.) Cost of 20% sales discounts to senior citizens		676,536.77	15,166,431.77
Income Tax Refundable		P	(311,586.77)

WHEREFORE, in the light of the foregoing, this Court finds the instant petition meritorious and in accordance with law. Accordingly, Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** to Petitioner in the amount of P311,586.77 representing overpaid corporate income tax for the year 1995.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
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 with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge