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. 7609

Members:

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

Promulgated:
JUN 11 2009 ;10:30 am

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DECISION

BAUTISTA, *J.*:

This is a Petition for Review filed by petitioner to seek the issuance of tax credit certificate in the amount of P3,395,948.87, representing the twenty percent (20%) sales discounts it allegedly granted to senior citizens on their purchases of medicines from petitioner for the period covering January 1, 2004 to March 20, 2004.

Bicolandia Drug Corporation (Petitioner) is a domestic corporation organized and existing under the laws of the Philippines, with principal office address at No. 7 Mercury Avenue, Bagumbayan, Quezon City. Petitioner is duly licensed to operate drug stores by the Bureau of Food and Drugs (BFAD), the Department of Trade and Industry (DTI), the

Bureau of Internal Revenue (BIR), and the local government units where the drugstores are located.[1]

In 2004, it operated seventeen (17) drug stores located in Naga Elias; Daet Panotes; Naga Abella; Iriga; Masbate Tara; Pili Omega Gold Plaza; Daet Lukban; Tabaco Albay; Sorsogon Magsaysay; Polangui Albay; Bulan Sorsogon; Nabua Hi-way I Camarines Sur; Legaspi Rizal; Labo Lukban; BU Arcade Daraga; Legaspi Old Albay; and Naga Panganiban.[2]

During the period from January 1, 2004 to March 20, 2004, petitioner purportedly granted 20% sales discounts in the amount of P3,395,948.87 to qualified senior citizens on their purchases of medicines from petitioner, in compliance with Republic Act (R.A.) No. 7432[3] and its Implementing Rules and Regulations.

In its 2004 Income Tax Return[4] filed with the BIR on April 15, 2005, petitioner treated the 20% sales discount of P3,395,948.87 as prepaid tax credit[5] by declaring as creditable tax withheld for the first three quarters the amount of P3,395,948.87[6].

On April 14, 2007, petitioner filed with respondent a request for the issuance of tax credit certificate in the amount of P3,395,948.878, equivalent to the 20% sales discounts supposedly granted by petitioner to qualified senior citizens for the period from January 1 to March 20, 2004.[7]

Due to respondent's inaction on petitioner's request for issuance of tax credit certificate, petitioner elevated its claim before this Court by filing this Petition for Review on April 16, 2007.

On June 1, 2007, respondent filed his Answer[8] and raised the following Special and Affirmative Defenses:

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[1] Pars. 1 and 3, Matters Agreed Upon During the Pre-Trial, Joint Stipulation of Facts (JSF), *Rollo*, p. 47
[2] Par. 2, Matters Agreed Upon During the Pre-Trial, JSF, *Rollo*, p. 47
[3] "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes."
[4] Exhibits "C" and "C-1"
[5] Par. 4, Matters Agreed Upon During The Pre-Trial, JSF, *Rollo*, p. 47
[6] Exhibit "C", line 27C
[7] Exhibits "E" , "E-1", and "E-2"; par. 5, Matters Agreed Upon During The Pre-Trial, JSF, *Rollo*, pp. 47-48
[8] *Rollo*, pp. 33-35

"6. The claim for refund is still under examination by the respondent's Bureau;

7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;

8. 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;

9. The power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed and any reduction or dimunition thereof with respect to its mode or its rate must be strictly construed and the same must be couched in clear and unmistakable terms in order that it may be applied. (Floro Cement Corporation vs. Gorospe, G.R. No. 46787, Aug. 2, 1991).

10. The instant petition for review was filed with this Honorable Court without the mandatory Resolution of the petitioner's Board of Directors authorizing the filing of the instant petition. Therefore, the instant petition was filed without the substantial compliance with the required certification on non-forum shopping per Sec. 5, Rule 7 of the New Rules of Civil Procedure, as amended."

Petitioner made its formal offer of documentary evidence on May 21, 2008, submitting Exhibits "A" to "GG-1". Respondent, on the other hand, manifested that he will not present any evidence and that he is submitting the case for decision.[9]

On October 17, 2008, the case was submitted for decision, taking into consideration petitioner's Memorandum filed on September 29, 2008, *sans* respondent's Memorandum.

The parties jointly stipulated the following issues[10] for this Court's resolution:

"1. Whether or not Petitioner's claim for refund or tax credit is substantiated by documentary evidence.

2. Whether or not Petitioner actually granted and is entitled to the issuance of a tax credit certificate in a total amount of P3,395,948.87 sales representing the discounts it granted to senior citizens on their purchases of medicines from January 1, 2004 to March 20, 2004."

[9] *Rollo*, p. 323
[10] Issues of the Case, JSF, *Rollo*, p. 48

The issues will be discussed jointly.

Section 4(a) of Republic Act No. 7432 provides as follows:

> "**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 medicines anywhere in the country: Provided, That private establishments may claim the cost as tax credit;"

There is no dispute that the 20% sales discount granted to qualified senior citizens under R.A. No. 7432 shall be treated as tax credits in accordance with the Decision of the Supreme Court in the case of **Commissioner of Internal Revenue vs. Central Luzon Drug Corporation**[11]. Accordingly, what is now left for determination is whether or not petitioner was able to substantiate its claim by documentary evidence.

In order to prove that it actually granted 20% sales discounts to qualified senior citizens, petitioner presented its Summary of Sales for 2004[12], Summary of Sales Discount Granted to Senior Citizens for 2004[13], Sample Form 153 or Daily Cash, Accounting Receivable and Sales Report of Petitioner filed by its MDC-Naga Abella branch on January 1, 2004[14], Cashier's Report filed by petitioner's MDC-Naga Abella branch on January 1, 2004[15], Daily Sales of Senior Citizens on January 1, 2004[16], Z Totalizer of all MDC-Naga Abella Branch cash register machine on January 1, 2004[17], cash slips evidencing the purchases of medicines by senior citizens for 2004[18], and sample BIR and BFAD Special Record Books for 2004[19].

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[11] G.R. No. 159647, April 15, 2005
[12] Exhibit "W"
[13] Exhibits "X" and "X-1"
[14] Exhibit "Z"
[15] Exhibit "Z-1" and "Z-2"
[16] Exhibit "Z-3"
[17] Exhibits "Z-4" to "Z-9"
[18] Exhibit "DD" (including submarkings)
[19] Exhibit "EE"

In his final Report[20] dated March 3, 2008, Mr. Nunilon P. Tagle, the Court-commissioned Independent Certified Public Accountant (CPA) certified that the amount of P2,502,010.99 represents 20% sales discounts given by petitioner to qualified senior citizens for the period covering January 1, 2004 to March 20, 2004, broken down as follows:

Branch	Amount Per Book	Amount Per Audit	Variance
Legaspi Rizal	P 134,272.45	P 129,727.19	P 4,545.26
Daet Panotes	124,260.81	126,563.17	(2,302.36)
Naga Abella	456,089.92	368,326.25	87,763.67
Iriga J.P. Rizal	253,749.92	255,184.91	(1,434.99)
Masbate Tara	160,166.43	173,559.89	(13,393.46)
Omega Gold Plaza Pili	58,292.48	48,119.74	10,172.74
Sorsogon Magsaysay	325,817.52	317,312.50	8,505.02
Polanqui Ubaliw	167,623.14	168,387.93	(764.79)
Naga Penafrancia	433,058.78	446,841.48	(13,782.70)
Bulan ML Quezon	61,090.29	61,090.29	-
Nabua Highway	132,068.99	128,903.95	3,165.04
Labo Lukban	66,616.08	66,616.08	-
Legaspi Old Albay	220,697.08	211,377.61	9,319.47
Total	**P 2,593,803.89**	**P 2,502,010.99**	**P91,792.90**

In support of the said findings, the Independent Auditor attached thereto a summary[21] wherein the 20% sales discounts given to senior citizens were properly itemized based on his verification of the cash slips issued by each of petitioner's branches and were compared against those that are reflected in petitioner's Special Record Books.

Even though the Court finds the Report in order, after comparing the amounts of 20% sales discounts to senior citizens per books and as audited by the Independent CPA, there were instances however when the amount per books exceeded the audited amount or *vice-versa.* To illustrate, for the period from January 1 to March 20, 2004, in the Summary

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[20] Exhibit "FF"
[21] Exhibit "FF", Annex "C"

of Sales Discount Given to Senior Citizens, the amount per book for Legaspi Rizal Branch was P134,272.45; while the corresponding audited amount was P129,727.19. Clearly, there is a discrepancy. Accordingly, only the audited amount of P129,727.19 will be considered as basis for computing petitioner's refundable amount, as this is the one that is duly substantiated. In the same breath, if the amount per books is lower than the audited amount, the former shall be used in determining petitioner's refundable amount since it is a rule that taxpayer cannot claim beyond what is prayed for in the Petition for Review. For the period from January 1 to March 20, 2004, the lesser of the per books *vis-a-vis* audited amounts on a per branch basis amounted to P2,470,332.69, computed as follows:

Branch	**Amount Per Book**	**Amount Per Audit**	**Should-Be Basis of Refundable Amount**
Legaspi Rizal	134,272.45	129,727.19	129,727.19
Daet Panotes	124,260.81	126,563.17	124,260.81
Naga Abella	456,089.92	368,326.25	368,326.25
Iriga J.P. Rizal	253,749.92	255,184.91	253,749.92
Masbate Tara	160,166.43	173,559.89	160,166.43
Omega Gold Plaza Pili	58,292.48	48,119.74	48,119.74
Sorsogon Magsaysay	325,817.52	317,312.50	317,312.50
Polanqui Ubaliw	167,623.14	168,387.93	167,623.14
Naga Penafrancia	433,058.78	446,841.48	433,058.78
Bulan ML Quezon	61,090.29	61,090.29	61,090.29
Nabua Highway	132,068.99	128,903.95	128,903.95
Labo Lukban	66,616.08	66,616.08	66,616.08
Legaspi Old Albay	220,697.08	211,377.61	211,377.61
Total	**2,593,803.89**	**2,502,010.99**	**2,470,332.69**

It must be pointed out that the substantiated amount of P2,470,332.69 is inclusive of VAT; hence, it is but proper to exclude the 10% VAT or the amount of P224,575.70, and only the resulting amount of P2,245,756.99 may be claimed as tax credit by petitioner.

In order however to validly claim the amount of P2,245,756.99 as tax credit, petitioner must also establish that the related gross sales to senior citizens (inclusive of the 20% sales discount) were declared as part of its taxable income.

Petitioner reported in its Annual Income Tax Return as sales for taxable year 2004 the amount of P670,194,733.00[22], which was likewise reflected in its Audited Financial Statements[23] for the same taxable year. Such sales amount of P670,194,333.00 included the gross sales to senior citizens related to the claimed 20% sales discount of P2,245,756.99 per this Court's examination of petitioner's Cash Receipts and Sales Book[24], as well as its General Ledger[25]. Evidently, the gross sales to senior citizens corresponding to the claimed 20% sales discounts of P2,245,756.99 formed part of petitioner's taxable income for 2004.

Since petitioner had an income tax liability for 2004 in the amount of P61,765.00 and it failed to substantiate its prior year's excess credits of P27,975,342.46, the claimed 20% sales discounts of P2,245,756.99 shall be partially applied against the income tax due of P61,765.00. Consequently, petitioner's unused tax credits arising from the 20% sales discounts it granted to senior citizens for the period covering January 1 to March 20, 2004 amounted only to P2,183,991.99, computed as follows:

Gross Income	P 3,088,246.00
Less: Deductions	26,901,876.00
Taxable Income	P (23,813,630.00)
Minimum Corporate Income Tax (MCIT) Due	P 61,765.00
Less: Tax Credits	
20% Sales Discounts Granted	
to Senior Citizens	2,245,756.99
Excess Tax Credits	**P 2,183,991.99**

WHEREFORE, petitioner's claim for issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **P2,183,991.99**, representing twenty percent (20%) sales discounts granted to senior citizens on their

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[22] Exhibit "C"
[23] Petition for Review, Annex "B", *Rollo*, pp. 16 to 24
[24] Exhibit "BB"
[25] Exhibit "AA"

purchases of medicines from petitioner for the period covering January 1, 2004 to March 20, 2004.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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