REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

MERCURY DRUG CORPORATION,	**C.T.A. CASE NO. 6663**
Petitioner,	Members:
	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	MAR 2 7 2006

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DECISION

PALANCA-ENRIQUEZ, J.:

The 20 percent discount required by law to be given to senior citizens under *Republic Act No. 7432* (hereafter "*R.A. No. 7432*") is a *tax credit,* not merely a *tax deduction* from the gross income or gross sale of the establishment concerned (*Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, 456 SCRA 423*).

THE CASE

This is a Petition For Review filed by Mercury Drug Corporation (hereafter "petitioner") praying for a refund or tax credit in the amount of

P686,250,617.92, representing the twenty percent (20%) sales discounts granted to qualified senior citizens on their purchases of medicines during the taxable year 2000, pursuant to *R.A. No. 7432*.

THE FACTS

The facts as stipulated by the parties are as follows:

Petitioner Mercury Drug Corporation 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 a retailer of medicines and other pharmaceutical products and operates several drugstores nationwide under the business name and style of "Mercury Drug" and as such the drugstores are duly licensed to operate by the Bureau of Food and Drugs, the Bureau of Internal Revenue and the local government units where the drugstores are located.

On various dates during the period from January to December 2000, petitioner granted twenty percent (20%) sales discounts to qualified senior citizens on their purchases of medicines from petitioner in compliance with *R.A. No. 7432* and its Implementing Rules and Regulations.

On April 14, 2003, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of Six Hundred Eighty Six Million Two Hundred Fifty Thousand Six Hundred Seventeen Pesos and 92/100 (P686,250,617.92).

On the same date, petitioner filed the instant Petition For Review in order to toll the running of the two-year prescriptive period, pursuant to *Section 229 of the NIRC of 1997, as amended.*

As of the date of the filing of this petition, respondent has not granted petitioner's request for a tax credit certificate and is not expected to issue said certificate since the Bureau of Internal Revenue (hereafter "BIR") has appealed to the Court of Appeals and the Supreme Court several decisions of this Honorable Court ruling that the sales discounts to senior citizens should be granted as tax credit.

In his answer, respondent alleged, by way of special and affirmative defenses, that the claim for refund is still under examination by respondent's Bureau; that the burden of proof is upon the petitioner to prove that it is entitled to the claim for refund; that the correct interpretation and enforcement of the provision on the tax credits of *R.A. No. 7432* is contained in *Section 2, paragraph (i) of Revenue Regulations*

No. 2-94 (hereafter "*R.R. No. 2-94*"); and that the provision under *R.A. 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 all taxes.

Petitioner presented Jesus P. Mangrobang, Alfonso Katigbac, Jovita Arlene Martinez and Felipe Jabonita, as witnesses, and submitted its Formal Offer of Evidence, which was admitted by the Court.

On the other hand, at the hearing on June 6, 2005, respondent manifested that the administrative claim has not been resolved and he is submitting the case for decision, and moved that he be given thirty (30) days therefrom within which to file his memorandum, which the Court granted. Petitioner was given twenty (20) days from notice within which to file its memorandum.

Only petitioner has complied thereto, and the case was deemed submitted for decision on January 16, 2006.

THE ISSUES

As agreed upon by the parties in their Joint stipulation of Facts and Issues, the following are the issues for this Court's consideration:

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I

WHETHER THE 20% SALES DISCOUNTS GRANTED TO SENIOR CITIZENS ON THEIR PURCHASES OF MEDICINES SHOULD BE TREATED AS TAX CREDIT DEDUCTIBLE FROM THE TAX DUE AS PROVIDED UNDER *R.A. 7432* OR MERELY AS A DEDUCTION FROM GROSS INCOME AS PROVIDED UNDER REVENUE REGULATIONS NO. 2-94.

II

WHETHER OR NOT PETITIONER ACTUALLY GRANTED A TOTAL AMOUNT OF P686,250,617.92 SALES REPRESENTING THE DISCOUNTS IT GRANTED TO SENIOR CITIZENS ON THEIR PURCHASES OF MEDICINES IN THE YEAR 2000.

III

WHETHER OR NOT THE PETITIONER IS ENTITLED TO BE GRANTED ITS ALLEGED TAX CREDIT IN THE AMOUNT OF P686,250,617.92 FOR THE TAXABLE YEAR ENDED 2000.

THE COURT'S RULING

The stipulated issues boil down to the principal issue of whether or not petitioner is entitled to a refund or tax credit in the amount of P686,250,617.92, representing the cost of the twenty percent (20%) sales discounts given to qualified senior citizens.

It is the submission of the petitioner that under *Section 4(a) of R.A. No. 7432*, the discounts granted to senior citizens may be claimed as tax credit by the private establishments granting such discounts. Subsequently, the Department of Finance and the Bureau of Internal Revenue issued *R.R. No. 2-94* to implement *R.A. No. 7432*. However, the said regulation is a clear contradiction of *R.A. No. 7432*. *Section 2, paragraph (i) of R.R. No. 2-94* defines the term "tax credit" to mean as follows:

> "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 and other similar places of culture, leisure and amusement, which discount shall be deducted by the said establishments from their gross sales for value-added tax and other percentage tax purposes."

It maintains that *Section 2(i) of R.R. No. 2-94* is erroneous considering that *Section 4(a) of R.A. No. 7432* provides that "the cost of the twenty percent (20%) sales discounts to senior citizens may be claimed as tax credit" and not as mere deduction from gross income.

On the other hand, respondent contends that the twenty percent (20%) sales discounts granted to senior citizens should be treated as a deduction from gross income and not as tax credit deductible from the tax due.

The principal issue raised in the present petition is not novel as the Supreme Court, in the aforecited case of *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation,* supra, had already resolved said issue. In said case, the Supreme Court ruled that the 20% sales discounts granted to qualified senior citizens under *R.A. No. 7432* should be treated as a tax credit, not merely a tax deduction from the gross income or gross sale of the establishment concerned. Thus:

> "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* 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*.
>
> To a senior citizen, the monetary effect of the privilege may be the same as that resulting from a *sales discount*. However, to a private establishment, the effect is different from a simple reduction in price that results from such discount. In other words, the *tax credit* benefit is not the same as a *sales discount*. To repeat from our earlier discourse, this benefit cannot and should not be treated as a *tax deduction*.

To stress, the effect of a *sales discount* on the *income statement* and *income tax return* of an establishment covered by RA 7432 is different from that resulting from the *availment* or *use* of its *tax credit* benefit. While the former is a deduction *before*, the latter is a deduction *after*, the *income tax* is computed. As mentioned earlier, a discount is not necessarily a *sales discount*, and a *tax credit* for a simple discount privilege should not be automatically treated like a *sales discount*. *Ubi lex non distinguit, nec nos distinguere debemus*. Where the law does not distinguish, we ought not to distinguish.

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." (***Commissioner of Internal Revenue vs. Central Luzon Drug Corporation***, *supra*).

Pursuant to the aforequoted ruling of the Supreme Court, the 20% sales discounts granted to qualified senior citizens under *R.A. No. 7432* should, therefore, be treated as a tax credit.

We now proceed to the question of whether or not petitioner is in fact entitled to recover, by way of tax credit, the sum of P686,250,617.92, representing the 20% sales discounts granted to qualified senior citizens for the year 2000.

In order to prove the 20% sales discounts granted to senior citizens upon purchase of their medicines, petitioner presented the various cash slips (*Exhibit "I"*), and the Summaries of Sales Discounts to Senior Citizens/Register of Senior Citizens transaction for the months of January 2000 up to December 2000 (*Exhibits "H", "H-1" to "H-11"*). In addition, petitioner submitted to this Court the report of the commissioned independent CPA dated March 25, 2004 (*Exhibit "G"*). According to the commissioned CPA, Mr. Alfonso P. Katigbac, out of the amount of P686,104,888.15 20% sales discounts, the sum of P6,754,258.43 was disallowed because the cash slips have no names or signatures, or ID numbers of the senior citizens and some were not legible. Hence, the discounts given wherein the required details for the issuance of cash slips had been duly substantiated, amounts only to P679,350,629.72, detailed as follows:

	Total per Summary	Total per Audit	Variance
January	P48,668,892.03	P48,520,425.09	P 148,466.94
February	50,426,879.37	50,060,001.52	366,877.85
March	55,621,978.77	55,313,924.78	308,053.99
April	52,452,198.35	52,251,554.12	200,644.23
May	55,677,177.64	55,507,401.73	169,775.91
June	56,112,568.92	55,972,973.07	139,595.85
July	58,826,652.06	58,586,244.98	240,407.08
August	60,760,510.69	59,895,494.09	865,016.60
September	60,076,791.44	59,664,081.30	412,710.14
October	63,026,369.91	60,069,199.89	2,957,170.02
November	59,214,090.57	58,602,432.21	611,658.36
December	65,240,778.40	64,906,896.94	333,881.46
Total	**P686,104,888.15**	**P679,350,629.72**	**P6,754,258.43**

Therefore, petitioner may only be entitled to a reduced amount of P679,350,629.72 representing the 20% sales discounts granted to senior citizens. However, a careful examination of petitioner's annual income tax return for taxable year 2001 ((*Annex "A", Petition For Review, C.T.A. Case No. 6935*) shows that a portion of the amount being sought for was applied to petitioner's 2001 income tax liability. To elaborate, pertinent portions of the 2000 and 2001 annual income tax returns are reproduced below:

Year 2000

Sales	P28,693,900,880.00
Less: Cost of Sales	24,385,764,973.00

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Gross Income from Operation	P 4,308,135,907.00
Add: Non-Operating Income & Other Income	235,481,002.00
Total Gross Income	P 4,543,616,909.00
Less: Deductions	3,729,688,928.00
Taxable Income	P 813,927,981.00
Tax Due	P 260,456,954.00
Less: Tax Credits/Payments	
Prior Year's Excess Credits	P 384,811,161.26
Creditable Tax Withheld for the First Three Quarters	**701,252,095.88**
Total Tax Credits/Payments	P 1,086,063,257.14
Overpayment	**P 825,606,303.14**

(*Exhibit "C"*)

Year 2001

Sales	P32,961,639,178.00
Less: Cost of Sales	28,033,748,901.00
Gross Income from Operation	P 4,927,890,277.00
Add: Non-Operating Income & Other Income	289,663,908.00
Total Gross Income	P 5,217,554,185.00
Less: Deductions	4,345,300,191.00
Taxable Income	P 872,253,994.00
Tax Due	P 279,121,278.00
Less: Tax Credits/Payments	
Prior Year's Excess Credits	**P 825,606,303.14**
Creditable Tax Withheld for the First Three Quarters	899,426,965.46
Total Tax Credits/Payments	P 1,725,033,268.60
Overpayment	P 1,445,911,990.60

(*Annex "A", Petition For Review, C.T.A. Case No. 6935*)

In the 2000 annual income tax return, petitioner has total tax credits in the amount of P1,086,063,257.00 consisting of Prior Year's Excess Credits of P384,811,161.26 and Creditable Taxes Withheld for the first three quarters of 2000 in the amount of P701,252,095.87 (*Exhibit "C"*). Included in the sum of P701,252,095.87 is the amount of

P686,250,617.92, representing the 20% sales discounts given to senior citizens for the year 2000 *(Petitioner's Memorandum, dated November 24, 2005, p. 3)*.

Likewise, petitioner's 2001 Annual Income Tax Return reveals that the amount of P825,606,303.14, inclusive of the amount of P686,250,617.92, representing petitioner's 2000 excess tax credits, was indicated as Prior Year's Excess Credit (*Annex "A", Petition For Review, C.T.A. Case No. 6935*). A fraction of the prior year's excess credit was utilized to offset petitioner's income tax liability for the year 2001 amounting to P279,121,278.00, and the balance thereof formed part of petitioner's tax overpayment for the year 2001. In other words, part of the amount being sought for has been utilized.

Although only a portion of the sum of P686,250,617.92 representing the 20% sales discounts given to qualified senior citizens was utilized to offset petitioner's income tax liability for the year 2001, still We cannot grant the unutilized portion. Petitioner did not present to this Court the annual income tax returns of the succeeding taxable years to prove that it never applied the 20% sales discounts to its income tax liabilities. Thus, the Court cannot ascertain whether the amount subject of the present claim has not been fully utilized.

Conformably to settled jurisprudence, petitioner, as claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund. Having failed to discharge the burden in this regard, petitioner's claim must, necessarily, fail.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice