REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TROPICAL HUT FOOD MARKET, INC.,
Respondent.

C.T.A. E.B. NO. 488
(C.T.A. CASE NO. 7174)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
OCT 3 0 2009 [illegible] 9:06 a.m.

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on May 22, 2009 under Republic Act No. 1125, as amended by Republic Act No. 9282, and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking a review of the Decision and Resolution by the First Division of this Court (Court in Division) which granted the Petition for Review in CTA Case No. 7174, entitled "Tropical Hut Food Market, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent",[1] to wit:

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[1] Ponencia of Presiding Justice Ernesto D. Acosta, First Division, concurred by Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.

1) Decision promulgated on February 6, 2009[2] granting the Petition for Review in CTA Case No. 7174 and accordingly canceling the deficiency income tax (MCIT) assessment against herein respondent for taxable year 2000; and

2) Resolution promulgated on April 22, 2009[3] denying herein petitioner's Motion for Reconsideration of the aforesaid Decision for lack of merit.

THE FACTS

The factual antecedents of the case, as found by the Court in Division, are as follows:

Petitioner is the duly appointed officer of the Bureau of Internal Revenue (BIR) holding office at BIR National Office Building, Diliman, Quezon City, where he may be served with summons, notices and other legal processes. Respondent, on the other hand, is a domestic corporation duly organized and existing under Philippine laws with principal address at 163 EDSA, Mandaluyong City.

Respondent filed its 2000 Income Tax Return on April 16, 2001, declaring therein, among others the following:

Sales	2,281,084,932.00
Less: Cost of Sales	1,989,121,501.00
Gross Income From Operation	291,963,431.00
Add: Other Income	60,669,080.00
Total Gross Income	352,632,511.00
Less: Deductions	333,831,946.00
Taxable Income	18,800,565.00
Tax Rate	32%
Income Tax	1,424,835.00
Minimum Corporate Income Tax (MCIT)	7,052,650.00
Income Tax Due	7,052,650.00
Less: Total Tax Credits/Payments	5,059,015.00
Tax Payable	1,993,635.00

[2] Docket, pp. 21-28.
[3] Ibid., at pp. 29-31.

Respondent filed its administrative claim for refund representing the discounts granted to senior citizens for taxable year 2000 on April 14 and 15, 2003. Later, it elevated its claim with the Court of Tax Appeals on April 15, 2003. The Petition was docketed as CTA Case No. 6674.

Meanwhile, respondent received from the BIR a Letter of Authority dated June 30, 2003 authorizing the examination of respondent's books of account for all internal revenue taxes from the period from January 1, 2000 to December 31, 2000. Later, it received a revised Preliminary Assessment Notice dated November 10, 2004 assessing respondent for deficiency income tax (MCIT), deficiency withholding tax-wages, deficiency expanded withholding tax, deficiency value added tax and deficiency documentary stamp tax.

In a letter dated November 16, 2004, respondent requested for a reconsideration of the said Preliminary Assessment Notice. Thereafter, respondent received a Formal Letter of Demand dated November 25, 2004 assessing it for deficiency income tax in the amount of P6,232,503.99. The other taxes, namely: withholding tax, expanded withholding tax, value added tax, documentary stamp tax were no longer included in the assessment notice. The said deficiency income tax (MCIT) assessment was computed as follows:

Sales		P2,281,084,932.00
Less: OSCA as Sales Discount		3,635,665.04
Net Sales		P2,277,449,266.96
Less: Cost of Sales	P1,770,436,868.00	
Direct Cost	218,684,633.00	P1,989,121,501.00
Gross Income From Operation		288,327,765.96
Add: Other Income		60,669,080.00
Total Gross Income		P 348,996,845.96

Tax Due		P	6,979,936.92
Less: Creditable Tax Withheld	P 1,421,639.01		
Tax Paid Per Return	1,993,635.00		3,415,274.01
Deficiency Tax		P	3,564,662.91
Add: 20% Interest up to 12-31-04 (.7414)			2,642,841.08
Compromise Penalty			25,000.00
TOTAL AMOUNT DUE		P	6,232,503.99

Respondent protested and contested the assessment of deficiency income tax, reiterating its argument that the BIR's treatment of discounts to senior citizens as sales discounts instead of as tax credit is not in accordance with law and jurisprudence and requested for reconsideration and reinvestigation of audit results/assessment notice. Thereafter, respondent received the Final Decision on Disputed Assessment on February 22, 2005 denying respondent's protest against the assessed deficiency income tax for the year 2000 due to lack of legal basis.

On March 22, 2005, respondent filed before the Court in Division the subject Petition for Review docketed as C.T.A. Case No. 7174 entitled "Tropical Hut Food Market, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent". After trial on the merits, the Court in Division rendered its Decision dated February 6, 2009, the dispositive portion of which states:

> "**WHEREFORE**, the instant Petition to reverse and set aside the Final Decision on Disputed Assessment is hereby **GRANTED**; and therefore, the deficiency income tax (MCIT) assessment for taxable year 2000 is hereby **CANCELLED**.
>
> **SO ORDERED**."[4]

Finding no valid or cogent reason to either alter or modify the assailed Decision, the Court in Division denied herein petitioner's Motion for

[4] Id., at p. 28.

Reconsideration of the aforesaid Decision in the Resolution dated April 22, 2009.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision and Resolution dated February 6, 2009 and April 22, 2009, respectively, of the Court in Division be set aside; and another decision be issued dismissing the Petition for Review in CTA Case No. 7174, and ordering respondent to pay the amount of P6,232,503.99 as deficiency income tax (MCIT) for taxable year 2000, inclusive of increments, plus 25% surcharge for late payment and 20% annual interest from December 31, 2004 until fully paid pursuant to Sections 248 and 249 of the NIRC of 1997.

As directed by the Court *En Banc,*[5] respondent filed its Comment on July 3, 2009.[6] Subsequently, both parties were required to submit their memorandum within thirty (30) days from notice in the Court dated Resolution dated July 8, 2009.[7] The parties filed their respective Memorandum both on August 13, 2009[8], and this case was deemed submitted for decision in the Resolution dated August 24, 2009[9].

Hence, this Decision.

THE ISSUES

The issues raised by petitioner in the instant petition are as follows:

"I.

WHETHER OR NOT THE DISCOUNTS GRANTED TO SENIOR CITIZENS UNDER SECTION 4 OF REPUBLIC ACT NO. 7432 SHOULD BE TREATED AS TAX CREDITS THAT CAN BE CLAIMED BY (RESPONDENT).

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[5] Resolution dated June 10, 2009, Docket, pp. 36-37.
[6] Docket, pp. 38-39.
[7] Id., at pp. 40-42.
[8] Respondent's Memorandum, Docket, pp. 43-53; Peittioner's Memorandum, Docket, pp. 54-63.
[9] Docket, p. 64.

II.

WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT JUDICIAL CLAIM FOR REFUND.[10]

Petitioner's Arguments:

Petitioner raises the following arguments:

(1) Discounts granted to senior citizens under Section 4 of Republic Act No. 7432 are in the nature of deductions and not tax credit;

(2) The term "tax credit" under Section 4(a) of R.A. No. 7432 was not intended to have the same meaning as that provided in the NIRC of 1997;

(3) The construction given to a statute by an administrative agency charged with the interpretation and application of the statute is entitled to great respect; and

(4) The Honorable Court has no jurisdiction over the judicial claim for refund because the Petition for Review was not filed within the two-year period of prescription provided by the law for a claim for refund.

According to petitioner, respondent's stand that the 20% discount granted to qualified senior citizens should be treated as a literal tax credit, should not be countenanced. The rationale of the provisions of R.A. No. 7342 is to afford assistance to the elderly of the State, to benefit those who have less in life. Moreover, he argues that if the discount is treated as a deduction from Gross Income, the seller would still benefit anyway, in the form of a tax shield equivalent to 32% of the 20% discount granted to qualified senior citizens, 32% being the corporate income tax rate, as compared to the outright deduction from tax equivalent to 100% of the aforesaid 20% discount granted.

[10] Petition for Review, p. 4.

Relative thereto, petitioner points out that discounts are normally deducted from gross sales in order to arrive at its net sales. Such is the rationale for the issuance of Revenue Regulations (RR) No. 2-94 and various BIR Rulings because the mechanics of availing the 20% discount is not included in R.A. No. 7432. The aforementioned revenue regulation did not alter, modify or amend the intent of the law. It merely put the term "tax credit" in the proper perspective to consider the 20% discount granted to qualified senior citizens as deduction from respondent's gross income and not as tax credit against its tax liability.

Lastly, the NIRC of 1997 clearly provides that both the administrative and judicial claims for refund shall be filed within the two-year prescriptive period from the date of payment of the tax regardless of any supervening cause that may arise after payment. Therefore, since the filing of the 2000 Income Tax Return was on April 16, 2001, its administrative claim for refund was filed on April 14 and 15, 2003 with the BIR, while its Petition for Review before the Court in Division was only filed on March 22, 2005, respondent's rights to seek judicial recourse has already been barred by prescription. Hence, petitioner posits that the Court in Division had no more jurisdiction over the instant case.

Respondent's Counter-arguments:

In respondent's Comment filed on July 3, 2009,[11] it is prayed that the present petition be denied for being devoid of any legal basis; that the deficiency tax for calendar year 2000 based on Section 2(i) of RR No. 2-94 was incorrect, and as decided by the Court in Division, should be cancelled. It

[11] Docket, pp. 38-39.

adheres to the Court in Division's discussion that the cancellation of the subject assessment against respondent was by reason of the mistreatment of the 20% discount granted to senior citizens pursuant to R.A. No. 7432 as deduction from Gross Income instead of a tax credit, in utter disregard of the pronouncements[12] of the Supreme Court.

THE COURT EN BANC'S RULING

The petition has no merit.

Evidently, the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the Court in Division, which had already been exhaustively discussed and passed upon by it in its assailed Decision and Resolution.

The first issue raised by petitioner as to whether or not the discounts granted to senior citizens under Section 4 of Republic Act No. 7432 should be treated as tax credits that can be claimed by herein respondent, is ruled in the affirmative.

We quote with approval the discussion of the Court in Division on the matter, to wit:

> "It is apparent that the disputed assessment under review stems from respondent's treatment of the 20% discounts granted to qualified senior citizens as deduction from petitioner's gross income pursuant to Sec. 2 (i) of Revenue Regulations No. 2-94, implementing Sec. 4 (a) of Republic Act (RA) No. 7432. Therefore, the sole issue to be considered in this case is the proper treatment of the aforesaid 20% discounts granted to qualified senior citizens pursuant to RA 7432, in order to properly rule on the disputed assessment.

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[12] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005; *Bicolandia Drug Corporation vs. Commissioner of Internal Revenue*, G.R. No. 142299, June 22, 2006; and *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 148512, June 26, 2006.

The issue of whether the 20% sales discount granted to qualified senior citizens pursuant to Sec. 4 (a) of RA No. 7432 may be claimed as a tax credit or as a deduction from gross sales in accordance with Sec. 2 (1) of Revenue Regulations No. 2-94 had already been settled in *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*[13] wherein the Supreme Court declared that:

> '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 sales 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.'

In *Bicolandia Drug Corporation vs. Commissioner of Internal Revenue*,[14] the Supreme Court held that the term cost in Sec. 4 (a) of RA 7432 refers to the amount of the 20% discount. This amount shall be applied as a tax credit, and may be deducted from the tax liability of the entity concerned.

In *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*,[15] the Supreme Court ruled that the discounts given under RA No. 7432 should be treated as tax credits, not deductions from income, and when claimed shall be treated as a reduction from any tax liability. Pertinent portion of the ruling of the High Court in the said case is hereunder reproduced:

> 'It is fundamental rule in statutory construction that the legislative intent may be determined from the language of the statute itself especially when the words and phrases therein are clear and unequivocal. The statute in such a case must be taken to mean exactly what it says. Its literal meaning should be followed; to depart from the meaning expressed by the words is to alter the statute.

[13] G.R. No. 159647, April 15, 2005.
[14] G.R. No. 142299, June 22, 2006.
[15] G.R. No. 148512, June 26, 2006.

The above provision explicitly employed the word 'tax credit'. Nothing in the provision suggests for it to mean a 'deduction from gross sales'. To construe it otherwise would be a departure from the clear mandate of the law.

Thus, the 20% discount required by the Act to be given to senior citizens is a tax credit, not a deduction from the gross sales of the establishment concerned. As a corollary to this, the definition of 'tax credit' found in Section 2(1) of Revenue Regulations No. 2-94 is erroneous as it refers to tax credit as the amount representing the 20% discount that 'shall be deducted by the said establishment from their gross sales for value added tax and other percentage tax purposes'. This definition is contrary to what our lawmakers had envisioned with regard to the treatment of the discount granted to senior citizens.

Accordingly, when the law says that the cost of the discount may be claimed as a tax credit, it means the amount — when claimed — shall be treated as a reduction from any tax liability. The law cannot be amended by a mere regulation. The administrative agencies issuing these regulations may not enlarge, alter or restrict the provisions of the law they administer. In fact, a regulation that 'operates to create a rule out of harmony with the statute is a mere nullity'.

Since the existence of the 20% discounts amounting to P3,635,665.04 which were granted by petitioner (respondent herein) to qualified senior citizens pursuant to Republic Act No. 7432 is recognized by the BIR as sales discount in the Preliminary Assessment Notice, Formal Letter of Demand, and Final Decision on Disputed Assessment and since the jurisprudence cited dictates that such treatment is erroneous; therefore, judicial affirmation of the deficiency income tax (MCIT) assessment is improper."[16]

For clarity, We quote the pertinent applicable legal provision in the instant case, which is Section 4(a) of Republic Act No. 7432, otherwise known as "An Act To Maximize The Contribution Of Senior Citizens To Nation

[16] Decision, CTA Case No. 7174, pp. 1-8, at pp. 6-8, Docket, pp. 21-28, at pp. 26-28.

Building, Grant Benefits And Special Privileges And For Other Purposes", as follows:

> "Sec. 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 establishments, restaurants and recreation centers and purchase of medicines anywhere in the country: **Provided, That private establishments may claim the cost as tax credit**.
>
> xxx xxx xxx" *(Emphasis Ours)*

Clearly from the foregoing, the 20% sales discounts required by law to be granted to qualified senior citizens shall be treated as **tax credits** and not merely as tax deductions from gross income pursuant to Republic Act No. 7432, which unconditionally grants a tax credit to all covered entities. Consequently, as petitioner's sole legal basis in assessing respondent for deficiency minimum corporate income tax for the calendar year 2000 was improper, We agree with the cancellation of the disputed assessment in this case.

With respect to petitioner's position that the construction given to a statute by an administrative agency charged with the interpretation and application of the statute is entitled to great respect, particularly the applicability of the provisions of Revenue Regulations No. 2-94, the Highest Court already declared said regulation as void for its failure to conform to the law it sought to implement.

Thus, as ruled in ***Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (formerly known as Elmas Drug Co.)***:

"The problem stems from the issuance of Revenue Regulations No. 2-94, which was supposed to implement R.A. No. 7432, and the radical departure it made when it defined the 'tax credit' that would be granted to establishments that give 20 percent discount to senior citizens. Under Revenue Regulations No. 2-94, the tax credit is 'the amount representing the 20 percent 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.' It equated 'tax credit' with 'tax deduction', contrary to the definition in Black's Law Dictionary, which defined tax credit as:

> 'An amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability. A tax credit reduces the taxpayer's liability . . . compared to a deduction which reduces taxable income upon which the tax liability is calculated. A credit differs from deduction to the extent that the former is subtracted from the tax while the latter is subtracted from income before the tax is computed.'

The interpretation of an administrative government agency, which is tasked to implement the statute, is accorded great respect and ordinarily controls the construction of the courts. Be that as it may, the definition laid down in the questioned Revenue Regulations can still be subjected to scrutiny. Courts will not hesitate to set aside an executive interpretation when it is clearly erroneous. There is no need for interpretation when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily understandable to an ordinary reader. The definition of the term 'tax credit' is plain and clear, and the attempt of Revenue Regulations No. 2-94 to define it differently is the root of the conflict.

xxx xxx xxx

From the above discussion, it must be concluded that Revenue Regulations No. 2-94 is null and void for failing to conform to the law it sought to implement. In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law

> **prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law.**
>
> **Revenue Regulations No. 2-94 being null and void, it must be ruled then that under R.A. No. 7432, which was effective at the time, respondent is entitled to its claim of a tax credit,** and the ruling of the Court of Appeals must be affirmed.[17]" *(Emphasis Ours)*

As regards the second issue as to "whether or not the Honorable Court has jurisdiction over the instant judicial claim for refund" pertaining to the Petition for Review docketed as CTA Case No. 7174, this Court would like to emphasize that the said case is not a claim for refund but an appeal from the Final Decision on Disputed Assessment denying respondent's protest against the Bureau of Internal Revenue's assessment for deficiency income tax for the taxable year 2000, the copy of which was received by herein respondent on February 22, 2005. As mentioned earlier, respondent's judicial claim for refund pertains to another case[18] docketed as CTA Case No. 6674.

Considering that the instant case pertains to a disputed assessment issued by petitioner, the applicable law is Section 228 of the NIRC of 1997, specifying the procedure in protesting an assessment issued by the Bureau of Internal Revenue. We quote the pertinent provisions thereof, to wit:

> "**Sec. 228. *Protesting of Assessment.*** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x
>
> x x x   x x x   x x x
>
> Within a period prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said

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[17] G.R. No. 148083, July 21, 2006 (496 SCRA 176).

[18] CTA Case No. 6674, entitled "Tropical Hut Food Market, Inc. vs. Commissioner of Internal Revenue" filed on April 15, 2003.

> notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted, otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part**, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis Ours)*

We look at the factual backdrop of this case as found by the Court in Division. The Court *a quo* found that respondent received from petitioner a Formal Letter of Demand dated November 25, 2004 assessing it of deficiency income taxes for the calendar year 2000. And in reply to respondent's protest to the said assessment notice, petitioner issued a Final Decision on Disputed Assessment against respondent denying its protest on the formal assessment of deficiency income taxes for the calendar year 2000, which was received by respondent on February 22, 2005.

Based on Section 228, from receipt of petitioner's Final Decision on February 22, 2005, respondent had a period of thirty (30) days or until March 24, 2005 within which to come to this Court to assail said decision. Records show that the petition for review in CTA Case NO. 7174 was filed on March 22, 2005, which is well within the prescriptive period.

Hence, the Court in Division had jurisdiction over the said case. Correspondingly, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision and Resolution dated February 6, 2009 and April 22, 2009, respectively.

WHEREFORE, in view of the foregoing considerations, the instant petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice