REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ST. WILLIAM DRUG CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7439

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAR 13 2008
1:00 p.m.

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DECISION

CASTAÑEDA, JR., *J*.:

This is a claim for issuance of tax credit certificate in the amount of P547,251.23, allegedly representing overpaid income taxes for taxable years 2003 and 2004, arising from the erroneous treatment of the 20% sales discounts granted by petitioner to qualified senior citizens on their purchases of medicines as deductions from gross income. Petitioner likewise prays that the phrase "tax deduction" under the last paragraph of Section 4 of Republic Act (R.A.) No. 9257 be either applied/construed as "deduction from tax" and "tax credit" or declared unconstitutional for being confiscatory.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at Laoag City Commercial Complex, F.R. Castro Avenue corner Villanueva Street, Laoag City.[1]

As a franchisee under the business name and style of "Mercury Drug", petitioner is duly licensed by the Department of Trade and Industry, the Bureau of Food and Drugs, and the local government unit of Laoag City to operate a drug store.[2]

On April 15, 2004 and April 14, 2005, petitioner filed its Annual Income Tax Returns for 2003 and 2004, respectively.[3]

Petitioner alleges that for the years 2003 and 2004, it granted twenty percent (20%) sales discounts in the amounts of P482,266.63 and P322,514.59, respectively, totaling P804,781.22 on medicines sold to qualified senior citizens, pursuant to R.A. No. 7432.

On March 8, 2006, petitioner filed with respondent a claim for tax credit/refund in the sum of P547,251.23, representing the costs of the 20% discount granted to qualified senior citizens on their purchases of medicines and the overpaid income taxes in 2003 and 2004, computed as follows:[4]

TAXABLE YEAR 2003

SALES, Net		P76,876,815.24
Add: Cost of 20% Discounts to Senior Citizens		482,266.63
Sales, Gross		P77,359,081.87
Less: Cost of Sales		
Merchandise Inventory, Beginning	P 8,622,228.36	
Purchases	73,703,812.28	

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[1] Paragraph 1, Joint Stipulation of Facts and Issues, Docket, page 69.
[2] Paragraph 2, *ibid.*
[3] Paragraph 3, *ibid.*
[4] Paragraph 4, *ibid.*, Docket, page 70; Exhibits "CC", "CC-1" to "CC-10".

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Merchandise Inventory, Ending	(10,909,095.74)	71,416,944.90
GROSS PROFIT		P 5,942,136.97
Add: Other Income (Net of Interest Income Subject to Final Tax)		62,393.07
TOTAL INCOME		P 6,004,530.04
Less: Operating Expenses		5,170,027.54
NET INCOME BEFORE INCOME TAX		P 834,502.50
INCOME TAX (32%)		P 267,040.80
Less: Income Tax Actually Paid		(112,715.48)
Cost of 20% Discounts to Senior Citizens		(482,266.63)
INCOME TAX (REFUNDABLE/CREDITABLE)		(P 327,941.31)

TAXABLE YEAR 2004

SALES, Net		P90,930,186.77
Add: Cost of 20% Discounts to Senior Citizens		322,514.59
Sales, Gross		P91,252,701.36
Less: Cost of Sales		
Merchandise Inventory, Beginning	P 10,909,095.74	
Purchases	84,460,872.56	
Merchandise Inventory, Ending	(10,647,002.66)	84,722,965.64
GROSS PROFIT		P 6,529,735.72
Less: Interest Income Subject to Final Tax (Net of Other Income)		4,785.32
TOTAL INCOME		P 6,524,950.40
Less: Operating Expenses		5,739,911.42
NET INCOME BEFORE INCOME TAX		P 785,038.98
INCOME TAX (32%)		P 251,212.47
Less: Income Tax Actually Paid		(148,007.80)
Cost of 20% Discounts to Senior Citizens		(322,514.59)
INCOME TAX (REFUNDABLE/CREDITABLE)		(P 219,309.92)
TOTAL INCOME TAX (REFUNDABLE/CREDITABLE)		(P 547,251.23)

On April 11, 2006, as the two-year prescriptive period for the filing of a judicial claim for taxable year 2003 was about to expire without action on the part of respondent, petitioner filed the instant Petition for Review.

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In support of its petition, petitioner submits the following arguments:

> "A. The mandated twenty percent (20%) discount given to qualified senior citizens under the Senior Citizens Law should be treated as a tax credit deductible from the taxes due as provided under said Senior Citizens Law and not as a mere deduction from gross sales as erroneously prescribed by Revenue Regulations No. 2-94.
>
> B. The phrase 'tax deduction' under the last paragraph of the Expanded Senior Citizens Law should be applied/construed to mean 'deduction from tax' or 'tax credit' while a contrary application/interpretation would yield to an unconstitutional provision for being confiscatory.
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> C. Petitioner's administrative and judicial claims for tax credit were filed within the two (2) – year statutory period.
>
> D. The twenty (20%) percent discounts granted by petitioner to qualified senior citizens pursuant to the Senior Citizens Law, as amended, during the period from January 1, 2003 to December 31, 2004 amounting to P781,774.60 were properly substantiated by evidence.
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> E. Petitioner is entitled to a tax credit in the total amount of P524,244.61 representing the cost of the twenty (20%) percent discounts granted to qualified senior citizens during the period from January 1, 2003 to December 31, 2004 and overpaid income taxes less income taxes payable for taxable years 2003 and 2004."

On the other hand, in his Answer filed on May 15, 2006, respondent counters:[5]

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
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> 5. The amount of P547,251.23 being claimed by petitioner as alleged tax credit for taxable years 2003 and 2004 was not properly documented;
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> 6. Revenue Regulations No. 2-94 did not alter, modify or amend the intent of the law to consider the 20% discount granted to qualified senior citizen as deduction from petitioner's

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[5] Docket, pages 41-43.

gross income and not as credit as against tax liability as petitioner insists.

7. With the accumulation of experience and growth of specialized capabilities by the agency charged with implementing a particular statute, it is now recognized principle that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the construction and other laws (*Nestle Philippines, Inc. vs. C.A. et. al., 203 SCRA 504*).

8. R.A. 7432 allows the discounts granted to senior citizens to be claimed as a tax credit but is silent as to the mechanics of availing the same. For clarification and as a curative measure, Revenue Regulations No. 2-94 was issued defining the term 'tax credit' as used in the law and providing therein the manner of claiming the same, which is by deduction from the establishment's gross income and not from its income tax liability. Otherwise an absurdity, not intended by the law, will arise.

9. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

10. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;

11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)*."

The parties jointly stipulated the following issues[6] to be resolved by this Court:

"a. Whether or not the claim of Petitioner for tax credit/refund was administratively and judicially filed within the two (2) – year statutory period.

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[6] Joint Stipulation of Facts and Issues, Docket, page 70.

b. Whether the twenty (20%) percent discount granted to qualified senior citizens on their purchases of medicines should be treated as a tax credit/refund deductible from the tax due as provided under Section 4(a) of Republic Act No. 7432 or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94.

c. (1). Whether or not the phrase "tax deduction" under Section 4 of Republic Act No. 9257 should be applied/construed to mean as "deduction from tax" or "tax credit" and (2). Whether or not to hold a contrary interpretation would make said legal provision unconstitutional for being confiscatory of private property without due process of law.

d. Whether or not during the period from January 1, 2003 to December 31, 2004, Petitioner granted the twenty (20%) percent discounts to qualified senior citizens on their purchases of medicines in compliance with Republic Act No. 7432, as amended by Republic Act No. 9257 in the total amount of P804,781.22.

e. Whether or not petitioner is entitled to a tax credit/refund in the amount of P547,251.23 representing the cost of the twenty (20%) percent discounts granted to qualified senior citizens on their purchases of medicines during the period from January 1, 2003 to December 31, 2004 and overpaid income taxes less income taxes payable for 2003 and 2004 taxable years."

Anent the first issue, the Court rules in the affirmative. Records show that petitioner's administrative claim for refund and its Petition for Review were filed within the two-year prescriptive period counted from April 15, 2004 and April 14, 2005, the dates when petitioner filed its income tax returns for taxable years 2003 and 2004, respectively.[7]

Regarding the second issue of whether or not the 20% sales discounts granted to senior citizens on their purchase of medicines should be treated as tax credit deductible from the tax due as provided under R.A. No. 7432 or merely as deduction from gross income as provided under Revenue

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[7] Section 229 of the Tax Reform Act of 1997 (Tax Code).

Regulations (R.R.) No. 2-94, the same had already been resolved by the Supreme Court in ***Commissioner of Internal Revenue vs. Central Luzon Drug Corporation***.[8] Pertinent portions of said Decision read as follows:

> "**The 20 percent discount required by 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 grants are void. Basic is the rule that administrative regulations cannot amend or revoke the law.
>
> xxx xxx xxx
>
> ***Grant of Tax Credit***
> ***Intended by the Legislature***
>
> Fifth, RA 7432 itself seeks to adopt measures whereby senior citizens are assisted by the community as a whole and to establish a program beneficial to them. These objectives are consonant with the constitutional policy of making 'health ... services available to all the people at affordable cost' and of giving 'priority for the needs of the ... elderly.' Sections 2.i. and 4 of RR 2-94, however, contradict these constitutional policies and statutory objectives.
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> Furthermore, Congress has allowed all private establishment a simple *tax credit*, not a deduction. In fact, no cash outlay is required from the government for the *availment* or *use* of such credit. The deliberations on February 5, 1992 of the Bicameral Conference Committee Meeting on Social Justice, which finalized RA 7432, disclose the true intent of our legislators to treat the *sales discounts* as a *tax credit*, rather than as a deduction from *gross income*. xxx." (*Emphasis supplied*)

Clearly from the foregoing, it is settled that the 20% sales discounts granted to qualified senior citizens shall be treated as tax credits instead of deductions from gross income, pursuant to R.A. No. 7432.

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

With reference to the third issue of whether the phrase "tax deduction" under Section 4 of R.A. No. 9257 should be applied/construed to mean as "deduction from tax" or "tax credit", the answer is in the negative. In ***Commissioner of Internal Revenue vs. Bicolandia Drug Corporation***,[9] the Supreme Court ruled that the 20% sales discounts granted to senior citizens pursuant to R.A. No. 9257 shall be treated as deductions from gross income and not as tax credits, to wit:

> "But even as this particular case is decided in this manner, it must be noted that the concerns of the petitioner regarding tax credits granted to private establishments giving discounts to senior citizens have been addressed. R.A. No. 7432 has been amended by Republic Act No. 9257, the 'Expanded Senior Citizens Act of 2003.' In this, the term 'tax credit' is no longer used. The 20 percent discount granted by hotels and similar lodging establishments, restaurants and recreation centers, and in the purchase of medicines in all establishments for the exclusive use and enjoyment of senior citizens is treated in the following manner:
>
> > The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: *Provided*, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. *Provided, further*, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended."
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> This time around, there is no conflict between the law and the implementing Revenue Regulations. Under Revenue Regulations No. 4-2006, '(o)nly the actual amount of the discount granted or a sales discount not exceeding 20% of the gross selling price can be deducted from the gross income, net of value added tax, if applicable, for income tax purposes, and from gross sales or gross receipts of the business enterprise concerned, for VAT or other percentage tax purposes.' Under the new law, there is no tax credit to speak of, only deductions."

[9] G.R. No. 148083, July 21, 2006.

The fourth and fifth issues shall be discussed jointly.

Based on the report of the commissioned independent CPA, Mr. Rodor M. Paraiso[10], out of the total amount of P804,781.22 claimed to have been given by petitioner as 20% sales discounts to senior citizens for taxable years 2003 and 2004, only the amount of P781,774.60 was properly supported by cash slips, broken down as follows:

Period Covered	20% Sales Discounts to Senior Citizens
January 1 - December 2003	P 476,384.79
January 1 – March 20, 2004	64,777.50
March 21 - December 31, 2004	240,612.31
	P781,774.60

Upon verification of the related cash slips/invoices[11], Summary of Sales Discounts to Senior Citizens[12], and Special Record Books[13], the Court finds the report in order. However, the aforesaid amount of P781,774.60, shall be reduced by excluding the 10% VAT of P71,070.42 included therein. Thus, the resulting amount of P710,704.18 represents valid 20% sales discounts granted by petitioner to senior citizens for taxable years 2003 and 2004, detailed as follows:

Period Covered	20% Sales Discounts to Senior Citizens (net of 10% VAT)
January 1-December 2003	P 433,077.08
January 1-March 20, 2004	58,888.64
March 21-December 31, 2004	218,738.46
	P 710,704.18

[10] Exhibit "NN".
[11] Exhibits "DD" and "HH", with corresponding cash slip/invoice numbers as sub-markings.
[12] Exhibits "KK" and "MM", inclusive of sub-markings.
[13] Exhibits "EE" and "II", inclusive of sub-markings.

As earlier discussed, under R.A. No. 9257, which took effect on March 21, 2004, the 20% sales discounts granted to senior citizens shall be treated as deductions from gross income instead of tax credits. Hence, petitioner cannot claim as tax credits the 20% sales discounts it granted to senior citizens for the period March 21, 2004 to December 31, 2004 in the amount of P218,738.46 and the alleged income tax overpayment arising from the erroneous deduction thereof from its gross income cannot be granted.

However, pursuant to R.A. No. 7432, petitioner may validly claim as tax credits the 20% sales discounts it granted to senior citizens for the periods of January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004 in the respective amounts of P433,077.08 and P58,888.64, or in the total amount of P491,965.72.

A scrutiny of petitioner's Cash Receipts Books[14], Special Record Books[15], General Ledgers[16], income tax returns[17], and financial statements[18] for taxable years 2003 and 2004 shows that petitioner's reported net sales for the said years included its sales to qualified senior citizens (net of the 20% sales discounts). In other words, petitioner erroneously treated the 20% sales discounts granted to senior citizens for the periods January 1, 2003 to December 31, 2003 and January 1, 2004 to March 20, 2004 in the respective amounts of P433,077.08 and P58,888.64 as deductions from its gross income instead of as tax credits. As a result, petitioner overpaid its income taxes for the said periods.

[14] Exhibits "FF" and "JJ", inclusive of sub-markings.
[15] Exhibits "EE" and "II", inclusive of sub-markings.
[16] Exhibits "GG" and "LL", inclusive of sub-markings.
[17] Exhibits "B" and "O".
[18] Exhibits "N-3" and "BB-3".

Nonetheless, in re-computing petitioner's refundable amount, it is also necessary to verify petitioner's actual income tax payments for 2003 and 2004 from the documents it submitted such as official receipts from the BIR's authorized agent banks[19] and various Certificates of Creditable Tax Withheld at Source[20].

An examination of the aforesaid documents shows that creditable VAT withheld in the sum of P1,958.64, detailed below, was utilized by petitioner in paying off its 2003 income tax liability:

Exhibits	**Withholding Agent**	**Period Involved**	**Amount**
M, M-1	Mariano Marcos State University	10/1/03-10/31/03	54.08
M-2, M-3	Mariano Marcos State University	10/24/2003	44.32
M-4, M-5	Mariano Marcos State University	9/1/03-9/30/03	1,860.24
		Total	**P1,958.64**

Since the creditable VAT withheld of P1,958.64 should be offset/applied against petitioner's output VAT liability and not against its income tax liability, the same shall be disallowed. Thus, out of petitioner's claimed income tax payment for 2003 in the amount of P112,715.48, only the amount of P110,756.84 is properly substantiated.

With reference to petitioner's actual income tax payment for taxable year 2004 in the amount of P148,007.80, the same was verified to have been duly supported by corresponding receipts and withholding tax certificates.

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[19] Exhibits "C", "E", "G", "I", "P", "R", "T", and "V".

[20] Exhibits "J", "K", "K-3", "K-5", "K-7", "K-9", "K-11", "L", "L-2", "L-4", "M", "M-2", "M-4", "W", "X", "Y", "Y-2", "Z", "AA", "AA-2", and "AA-4".

After re-computing petitioner's income tax liability for the taxable year January 1, 2003 to December 31, 2003, petitioner actually made an overpayment of its 2003 income tax by P290,801.04, computed as follows:

Sales, Net	P76,876,815.24
Add: 20% Discounts to Senior Citizens	438,491.88 [21]
Sales, Gross	P77,315,307.12
Less: Cost of Sales	71,416,944.90
Income from Operation	P 5,898,362.22
Add: Non-Operating & Other Income	62,393.07
Gross Income	P 5,960,755.29
Less: Deductions	5,170,027.54
Taxable Income	P 790,727.75
Income Tax Due (32%)	P 253,032.88
Less: Validly supported income tax payment	110,756.84
Validly supported sales discounts to senior citizens	433,077.08
Income Tax Overpayment	**P 290,801.04**

As regards petitioner's income tax overpayment for the period January 1, 2004 to March 20, 2004, the same shall be computed using the formula of income tax benefit of tax credit (100%) minus income tax benefit of tax deduction (32%) equals the differential of 68% which shall be multiplied by the amount of P58,888.64, representing the 20% sales discounts granted by petitioner to senior citizens for the said period, as shown below:

Income Tax Benefit of Tax Credit	100%
Less: Income Tax Benefit of Tax Deduction	32%
Income Tax Differential	68%
Multiplied by: 20% Sales Discounts to Senior Citizens	P58,888.64
Income Tax Overpayment	**P40,044.28**

To recapitulate, the Court finds petitioner entitled to the issuance of a tax credit certificate representing unused tax credits/income tax overpayment arising from the erroneous deduction from its gross income of the 20% sales discounts granted to qualified senior citizens for the periods January 1, 2003

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[21] Sales Discounts per ledger (Exhibit "GG-5") P482,341.07
Less: 10% VAT 43,849.19
Net Sales Discounts P438,491.88

to December 31, 2003 and January 1, 2004 to March 20, 2004, in the respective amounts of P290,801.04 and P40,044.28, totalling P330,845.32, computed as follows:

Period Covered		Income Tax Overpayment
January 1, 2003 to December 31, 2003		P 290,801.04
January 1, 2004 to March 20, 2004		40,044.28
	Total:	**P 330,845.32**

WHEREFORE, this instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **THREE HUNDRED THIRTY THOUSAND EIGHT HUNDRED FORTY-FIVE PESOS AND 32/100 (P330,845.32)**, representing unused tax credits/income tax overpayment arising from the 20% sales discounts granted to qualified senior citizens for taxable years 2003 and 2004.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice