REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOUTHERN LUZON DRUG CORPORATION (formerly known as LAGUNA DRUG CORPORATION),
Petitioner,

- versus -

C.T.A. CASE NO. 5583

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 24 2000

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DECISION

This case involves a claim for refund/tax credit in the amount of P89,609.00 for the taxable year 1995 arising from the alleged erroneous treatment of the 20% sales discounts granted to qualified senior citizens on their purchases of medicines as a deduction from gross income as prescribed by Revenue Regulations No. 2-94 instead of as a tax credit as provided for in Republic Act No. 7432 (Senior Citizens Act).

Petitioner is a domestic corporation (Exh. D) engaged in the retailing of medicines and other pharmaceutical products. It is duly authorized to operate as a drugstore under the name and business style of "Mercury Drug" by the Bureau of Food and Drugs, Department of Trade and Industry, and the Cities of San Pablo and Batangas (Exhs. L, M, N, P, Q, R, S).

In compliance with R.A. 7432, otherwise known as Senior Citizens Act, petitioner granted 20% sales discount on medicines sold to qualified senior citizens.

For the period January to December 1995, the sales discounts granted to qualified senior citizens amounted to P115,530.00 which petitioner deducted from its gross sales in 1995 (TSN, Oct. 29, 1998, p. 24).

Petitioner filed its 1995 corporate annual income tax return on April 15, 1996 (Exh. H) declaring a net loss.

It is the position of the Petitioner that Section 2(i) of Revenue Regulations No. 2-94 treating the 20% sales discounts granted to qualified senior citizens as a tax deduction from gross sales is illegal, void and without force and effect inasmuch as Section 4 of R.A. 7432 unequivocally provides that the 20% sales discounts can be claimed as a tax credit. Hence, it filed a claim for refund with the Bureau of Internal Revenue on December 27, 1996 (Exh. J) in the sum of P89,609.00 computed as follows:

TOTAL INCOME	P2,594,990.00
Operating Expenses	2,501,453.00
NET INCOME BEFORE TAX	P 93,537.00
INCOME TAX (35%)	25,921.00
LESS:	
DISCOUNT TO SENIOR CITIZEN - 20%	115,530.00
INCOME TAX PAYABLE	(89,609.00)
INCOME TAX ACTUALLY PAID	- 0-
TAX REFUNDABLE/OVERPAID INCOME TAX	(P 89,609.00)

The claim having been unacted upon by the respondent and to interrupt the running of the prescriptive period, the instant petition was filed on March 18, 1998.

The issues brought to Us for consideration are:

(1) Whether or not the 20% sales discounts granted to qualified senior citizens on their purchases of medicines should be treated as a tax credit per Sec. 4 of R.A. 7432 or as a deduction from gross (income) sales according to Sec. 2(i) of Revenue Regulations 2-94; and

(2) Whether or not petitioner is entitled to the refund sought.

This is not a case of first impression. In the cases of **Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 5367, February 16, 1998, We already ruled that the 20% sales discount should be treated as a tax credit and not a mere deduction from gross income.

For easy comprehension, the particular provisions of the law and regulation relied upon by the parties are hereunder reproduced:

> "**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. x x x" (underscoring supplied)

Section 2(i), Revenue Regulation No. 2-94:

> "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 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 sales for value-added tax or other percentage tax purposes." (underscoring supplied)

In the case of **Del Rosario Drug Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 5357, April 6, 1998, We further elucidated, *viz*:

> "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.

Black's Law Dictionary, 6th ed., defines tax credit in this wise:

> 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 dollar for dollar, compared to a deduction which reduces taxable income upon which the tax liability is calculated. <u>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</u>. (Underscoring supplied)

Under RR No. 2-94, respondent has interpreted tax credit as synonymous to tax deduction in glaring contradiction to the above definition. Undoubtedly, there is a clear distinction, nay, difference between the two terms.

Under these circumstances, the law should reign supreme over subordinate rules and regulations where the provisions of the latter are not in accord with the former. It is clearly provided in Section 4(a) of RA 7432 that the cost of the 20% discount granted by private establishments may be claimed by the latter as tax credit and not as a deduction contrary to what has been declared in Revenue Regulations No. 2-94. In case of conflict between a statute and are administrative order, the former must prevail. (Kilusang Mayo Uno vs. Garcia, Jr., 239 SCRA 386) Furthermore, the legal issue in this petition has already been settled in the case entitled Sto. Rosario Drug vs. Commissioner of Internal Revenue, CTA Case No. 5367, dated February 16, 1998.

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."

Thus, having clearly settled the legal issue We now proceed to the factual issue of whether or not petitioner is entitled to the refund/tax credit sought.

We rule in the negative.

The petitioner claims that the amount of P89,609.00 was arrived at by adding back the discounts to senior citizens in the amount of P115,530.00 to the net sales amounting to P28,177,700.00 to get the gross sales of P28,293,230.00. The cost of sales in the sum of P25,725,838.00 was deducted from the gross sales to arrive at the gross profit of P2,567,392.00. The miscellaneous income in the amount of P27,598.00 was added to the gross profit to arrive at the total income amounting to P2,594,990.00. Petitioner's operating expenses amounted to P2,501,453.00 which was then deducted from its total income. The net income before income tax was P93,537.00. The income subject to final tax of P19,477.00 was deducted from the net income before income tax to get the net income of P74,060.00. The tax due therefrom was P25,921.00 which petitioner deducted from P115,530.00, leaving only the amount of P89,609.00 as the subject of its present claim.

However, petitioner maintains that it incurred net losses from its operations and therefore, it is not liable for payment of income tax.

It must be pointed out that petitioner's computation of its refundable amount should be as follows:

Gross Sales		P28,293,230.00
20% Sales Discount		115,530.00
Gross/Net Sales		28,177,700.00
Less: Cost of Goods Sold		25,725,838.00
Gross Profits		2,451,862.00
Less: Operating Expenses		2,501,453.00
Net Operating Profit/Loss		(P 49,591.00)
Add: Miscellaneous Income Per Schedule 3, ITR		8,122.00
Net Income/Loss		(P 41,469.00)
Income Tax Due Thereon		P 0.00
Amount of 20% as finally determined		P115,429.95
Less: 1. Amount excluded by Independent CPA	130.76	
2. Item disallowed by the Court	151.05	281.81
Amount of 20% Sales Discount Allowed		P115,148.14
Cost of the 20% Sales Discount: P25,725,838.00/P28,293.230.00 = 90.0% x P115,148.14 =		P104,669.66

However, even if the above computation shows the amount of P104,669.66 as the total of the 20% sales discount based on the formula shown, this cannot be granted because no income tax was paid by the petitioner during the taxable year involved.

It must be borne in mind that both tax refund and tax credit are modes of recovering taxes which are either erroneously or illegally paid to the government. Tax refund takes place when there is actually a reimbursement of the tax. In tax credit, the government applies the amount determined to be reimbursable after proper verification against any sum that may be due and collectible from the taxpayer. (Law of Basic Taxation in the Philippines, Aban, 1st Ed., p. 208). Accordingly, if no tax has been paid to the government, erroneously or illegally, or if no amount is due and collectible from the taxpayer, tax refund or tax credit is unavailing. Moreover, whether the recovery of the tax is made by means of claim for refund or tax credit, before recovery is allowed it must be first established that there was an actual collection and receipt by the government of the tax sought to be recovered. This requires factual proof (Collector vs. William Li Yao, Dec. 28, 1963). The taxpayer who paid the tax can file a claim for refund or credit where there is an overpayment of the tax (Law of Federal Income Taxation, Mertens, 1995 Ed., Vol. 15, Chap. 58, p. 2). In the case at bar, it is undisputed that petitioner did not pay any tax by virtue of its net loss position in 1995.

Furthermore, Section 204(3) of the Tax Code, as amended, in relation to Section 230 presupposes payment of tax, to wit:

> **SEC. 204(3)** - xxx. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years <u>after the payment of the tax</u> or penalty.
>
> **SEC. 230.** ***Recovery of tax erroneously or illegally collected.*** - xxx
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the <u>date of payment of the tax or penalty regardless of any supervening cause that may arise after payment</u>. (Emphases supplied.)

We would also like to stress at this point that Republic Act No. 7432 only provides that the 20% sales discount granted to senior citizens may be claimed as tax credit. It does not contain any proviso that a refund may be claimed as an alternative thereto. In fact, the legislators intended that there would be no cash out, thus, the tax credit. We quote the pertinent portion during the deliberations by the Bicameral Conference Committee on Social Justice on February 5, 1992:

> <u>SEN. ANGARA. ...in the case of private hospitals... they got the grant of 15% discount, provided that, the private hospitals can claim the expense as a tax credit.</u>
>
> <u>REP. AQUINO. Yah... could be allowed as deductions in the perpetrations of...(inaudible) income...</u>

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SEN. ANGARA. I-tax credit na lang natin para walang cash out ano?

REP. AQUINO. Oo tax credit. Tama, Okay. Hospitals ba o lahat ng establishments na covered?

THE CHAIRMAN. (Rep. Unico). Sa kuwan lang 'yon, as private hospitals lang.

REP. AQUINO. Ano ba 'yung establishments na covered?

SEN. ANGARA. Restaurants, lodging houses, recreation centers.

REP. AQUINO. All establishments covered siguro?

SEN. ANGARA. From all establishments. Alisin na natin 'yung kuwan kung ganon. Can we go back to Section 4 ha?

REP. AQUINO. Oho.

SEN. ANGARA. Letter A. To capture that thought, we'll say the grant of 20% discount from all establishments et cetera, et cetera, provided that said establishments - provided that private establishments may claim the cost as a tax credit. Ganon ba 'yon?

REP. AQUINO. Yah.

In sum, even if the law allows the 20% sales discounts, which herein petitioner granted to senior citizens, as tax credit, the subject claim is still denied.

As already adverted to, by virtue of the recomputation/adjustment made by the petitioner, a tax due of P25,921.00 resulted. The 20% sales discounts granted to senior citizens for the year, on the other hand, amounted to P115,530.00 or P115,299.19 (Exh. K) as per CPA certification. Only the amount of P25,921.00 can be granted as tax credit. Inasmuch as the said amount is still due and collectible from the petitioner, a credit of the same amount may be applied against same tax liability. However, the amount of P89,609.00, which is the subject claim for refund, cannot be allowed as tax credit. A tax credit is usually but not necessarily of greater benefit, since the application is against tax liability. (Law of Federal Income Taxation, Mertens, 1975 Ed., Vol. 5, Chap. 33, p. 5). In other words, if there is no tax liability then tax credit is not available. If there is a tax liability but it is less than the 20% sales discounts granted to senior citizens, as in the case at bar, the tax credit will be only to the extent of the tax liability.

WHEREFORE, in view of all the foregoing, the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

(Dissenting)
ERNESTO D. ACOSTA
Presiding 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