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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TRINITY FRANCHISING AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5605

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 30 2000

x -x

DECISION

This is a claim for refund or tax credit in the amount of ₱89,999.00 representing alleged overpaid corporate income tax for the year 1995.

Petitioner is a franchisee-retailer of medicines and other pharmaceutical products under the business name and style of "Mercury Drug". As such, it is duly licensed by the Department of Trade and Industry, Bureau of Food and Drugs, and the Municipality of Daet, Camarines Norte to operate a drug store.

The facts are simple.

For its Annual Income Tax Return for year 1995 filed on April 15, 1996, Petitioner was allegedly forced to treat as a deduction from gross income the sales discounts it made on purchases of medicines by qualified senior citizens. The deduction was done pursuant to the provisions of Section 2, Paragraph (i) of Revenue Regulations No. 2-94, which implements Section 4 of Republic Act No. 7432, otherwise known as "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes".

However, Petitioner believed that the sales discounts it has granted to qualified senior citizens should have been claimed as a tax credit pursuant to Section 4 (a) of Republic Act No. 7432 and not as a deduction from gross income.

Using the formula of income tax benefit of tax credit (100%) minus income tax benefit of tax deduction (35%) equals the differential of 65%, Petitioner multiplied by 65% the amount of ₱138,460.00 representing the 20% sales discounts it has granted in 1995 to come up with the creditable or refundable amount of ₱89,999.00.

Hence, on December 27, 1996, (Exhibit "K"), Petitioner filed with the Respondent a claim for refund of the excess corporate income tax it has paid for year 1995 in the amount of ₱89,999.00.

On April 7, 1998, however, Petitioner allegedly was constrained to file the instant Petition due to the continued inaction of the Respondent on its claim for refund and the fact that the two-year prescriptive period for the filing of a judicial action over said claim as prescribed in Section 230 of the Tax Code was about to lapse.

At bar, Petitioner reasserts its stance a quo. On the other hand, Respondent merely interposed as special and affirmative defenses the general principles of taxation that in an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected; and that claims for refund are strictly construed against the taxpayer.

In his memorandum, Respondent elaborated on his opposition to the claim for refund, to wit:

> x-x-x x-x-x x-x-x
>
> The provision under Republic Act No. 7432, which states that the 20% sales discounts on purchases of medicines by senior citizens be treated as tax credit is a misnomer as it runs counter to the solemn duty of the government to collect taxes. The power of taxation is a high prerogative of sovereignity (sic). Its relinquishment is never presumed and any reduction or diminution 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 Corp. vs. Gorospe, G.R. No. 46787, August 12, 1991)

x-x-x x-x-x x-x-x

A careful perusal of the provision of RA 7432 will reveal that the treatment of the 20% sales discounts as a tax credit will yield to no other conclusion that it derogates the performance of a vital state function - power of taxation, the source of the bulk of public funds.

As aptly applied under generally accepted accounting principles "discounts" are treated as follows:

1. Discounts can be recorded as an expense of the period.

2. Discounts can be recorded as a reduction from gross sales.

3. Sales revenue can be initially recorded at the net amount after deduction of the discount. Amounts received from customers who do not take the discount would then be recorded as additional revenue.

It is likewise important to note that the legal provision in question (Sec. 4 of RA 7432) employs the word "may" in the clause." PROVIDED, that private establishments may claim the cost as "tax credit" implying that the availability of the remedy of tax credit is not absolute and mandatory, it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if it so chooses neither does it impose a duty on the part of the government to sit back and allow an important facet of tax collection to be at the sole control and discretion of the taxpayer. (BIR Ruling 067-95 dated April 11, 1995)

x-x-x x-x-x x-x-x

Anchored on the foregoing facts, this Court is confronted with the following issues, to wit:

1. Whether or not the 20% sales discounts granted to qualified senior citizens on their purchase of medicines from the Petitioner be treated as a deduction from gross income pursuant to Revenue Regulations No. 2-94, or as a tax credit pursuant to Republic Act No. 7432; and if in favor of the Petitioner,,

2. Whether or not Petitioner has proven with sufficient evidence its claim for refund or tax credit.

For clarity, hereunder quoted are the provisions of law and regulations in point:

> A) Section 4 of Republic Act No. 7432:
>
> "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 establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: *Provided*, That private establishments may claim the cost as tax credit. (underscoring supplied)
>
> B) Section 2(i) of Revenue Regulations 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 income for income tax purposes and from their gross sales for value-added tax and other percentage tax purposes." (underscoring supplied).

The first issue is nothing new. In the case of **Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, promulgated on February 16, 1998**, this Court upheld the treatment of sales discounts as tax credit instead of mere deductions, thus:

> The provision of Section 4 of R.A. 7432 is crystal clear-the 20% discounts granted to qualified senior citizens may be claimed as tax credit. And as a settled rule of statutory construction, when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says (***Marin vs. Nacianceno, 19 Phil. 238***). Construction and interpretation come only after it has been

> demonstrated that application is impossible or inadequate without them (***People vs. Mapa, G.R. No. L-22301, August 30, 1967***).
>
> It is true that the respondent has the power of subordinate legislation effected by her issuance of implementing rules and regulations such as Revenue Regulations No. 2-94 in the case at bar, but the said power is not without limit. The administrative regulation must not be in sharp conflict with the governing statute it seeks to implement (***Nestle Philippines, Inc. vs. Court of Appeals, et al, 203 SCRA 504***). Revenue Regulations No. 2-94 gave a new meaning to the phrase "tax credit", interpreting it to mean that the 20% discount granted to qualified senior citizens is an amount deductible from the establishment's gross sales, which is completely contradictory to the literal or widely accepted meaning of the said phrase, as an amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability (***Black's Law Dictionary***).
>
> x-x-x x-x-x x-x-x
>
> In view of such apparent discrepancy in the interpretation of the term "tax credit", the provisions of the law under R.A. 7432 should prevail over the subordinate regulation issued by respondent under Revenue Regulations No. 2-94.

Moreover, a look into the deliberations of the Bicameral Conference Committee Meeting on Social Justice held on February 5, 1992 which finalized the contents of Republic Act 7432 lucidly reveals that the real intent of the lawmakers was to treat sales discounts as a tax credit rather than as a deduction from gross income, thus:

> "THE CHAIRMAN, (Rep. Unico). By the way, before that ano, about deductions from taxable income. I think we incorporated there a provision na-on the responsibility of the private hospitals and drugstores, hindi ba?
>
> SEN. ANGARA. O, o.
>
> THE CHAIRMAN (Rep. Unico), So, I think we have to put in also a provision here about the deductions from taxable income of that private hospitals, di ba ganon `yan?
>
> MS. ADVENTO. Kaya lang po sir, and mga discounts po nila affecting government and public institutions, so, puwede na po

nating hindi isama `yung mga less deductions ng taxable income.

THE CHAIRMAN. (Rep. Unico). Puwede na. Yung about the private hospitals. Yung isiningit natin?

MS. ADVENTO. Singit na po ba yung 15% on credit...(inaudible/did not use the microphone).

SEN. ANGARA. Hindi pa, hindi pa.

THE CHAIRMAN. (Rep. Unico) Ah, `di pa ba naisama natin?

SEN. ANGARA. O, o. You want to insert that?

THE CHAIRMAN (Rep. Unico). Yung ang proposal ni Senator, Shahani, e.

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.

REP. AQUINO. Yah could be allowed as deductions in the perpetrations of (inaudible) income

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

REP. AQUINO. O.o, tax cedit. 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. Restaurant 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.
SEN. ANGARA. Dahil kung government, they don't need to claim it.

THE CHAIRMAN. (Rep. Unico). Tax credit.

SEN. ANGARA. As a tax credit rater than a kuwan-deduction, Okay.

REP. AQUINO. Okay.

SEN. ANGARA. Sige, Okay. Di, subject to style na lang sa Letter A".

(pp. 22-24, underscoring supplied)

With the legal issue succinctly settled, this Court now turns its attention to the second issue on whether or not Petitioner has substantiated its claim for refund or tax credit. We partially rule in favor of the Petitioner.

In conformance with CTA Circular No. 1-95, Petitioner availed of the audit services of Vicente E. Reyes & Associates through the person of Mr. Rene Amby Reyes who was then commissioned by this Court to submit a report of his findings with regard to Petitioner's alleged 20% Sales Discount to Senior Citizens. After a special audit, Mr. Reyes came out with the required report (Exh. "R") stating the detailed audit procedures performed and the total Senior Citizens' 20% discount amounting to ₱139,616.48, broken down as follows:

Discounts given wherein the required details for the issuance of cash slips are complete	P 136,334.45
Discounts wherein the required ID numbers are not indicated in the cash slips but the same can be found in the BFAD special record book.	1,046.95
Discounts wherein the signature of the senior citizens does not appear in the cash slips but the BFAD special record book contains said signature.	2,235.08

TOTAL	₱ 139,616.48

Per Mr. Reyes' verification and using the income tax benefit/differential formula earlier mentioned, the overpaid income tax arrived at amounted to ₱90,750.71 computed as follows:

Income tax benefit of tax credit	100%
Income tax benefit of tax deduction	35%
Differential	65%
Total Senior Citizen's Discount	P139,616.48
Multiply by	65%
Overpaid Income Tax	₱ 90,750.71

However, a cursory review of the above computation by Mr. Reyes showing the recommended amount of ₱90,750.71 as differential would show that it exceeds the amount being claimed in the instant petition amounting to ₱89,999.00. Such a bigger amount cannot be allowed inasmuch as the administrative claim for refund as well as the instant petition only pray for the lesser amount of ₱89,999.00, this, not withstanding the fact that petitioner's memorandum (found on pages 63 to 75) raised the claimed amount to P90,751.00. The amount claimed by petitioner in the administrative level which is P89,999.00 is still the reference point as said amount was the one brought to the attention of the Commissioner of Internal Revenue. This stand is consistent with the clear wordings of section 230 of the 1995 Tax Code which provides, thus:

> **SEC. 230.** ***Recovery of tax erroneously or illegally collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid. (Underscoring supplied)

It must be noted likewise that upon a scrutiny of Petitioner's letter claim for refund or tax credit submitted to the Commissioner of Internal Revenue, together with its ledger of sales discounts as offered before this Court (Exhibits "C" & "F"), only the amount of ₱138,460.00 was stated to be the 20% discount given to senior citizens. Multiplying the same amount with the differential rate of 65%, the amount of ₱89,999.00 as stated in the present petition is obtained.

Finally, a re-examination of Mr. Reyes' report based on the evidence on record reveals that some exhibits (cash slips) should be disallowed due to the following reasons:

(a) Not among those admitted by the Court in a Resolution, dated March 01, 1999.

CASH SLIPS Invoice No.	EXHIBIT	AMOUNT
113101 to 113116	Q-113901 to Q-113916	₱ 941.95
114701	Q-114000	25.25
115801 to 115804	Q-115401 to Q-115404	297.22
	Subtotal	₱1,264.42

(b) Not formally offered as evidence.

CASH SLIPS Invoice No.	EXHIBIT	AMOUNT
119301 to 119400	Q-119301 to Q-119400	₱ 8,127.16
119901 to 120000	Q-119901 to 120000	8,111.57
121701 to 121795	Q-121701 to Q-121795	8,107.62
ERR	Q-ERR	309.15
122201 to 122300	Q-122201 to Q-122300	8,327.39

122701 to 122708	Q-122301 to Q-122308	396.09
122709 to 122799	Q-122709 to Q-122799	5,325.50
123101 to 123200	Q-123101 to Q-123200	6,468.08
123601 to 123617	Q-123201 to Q-123217	984.52
123618 to 123700	Q-123618 to Q-123700	5,697.42
124001 to 124086	Q-124001 to Q-124086	5,962.87
	Subtotal	₱56,962.87

(c) Original cash slips

CASH SLIP Invoice No.	EXHIBIT	AMOUNT
113012 to 113100	Q-113012 to Q-113100	₱ 6,185.37
120601 to 120700	Q-120601 to Q-120700	7,658.53
121301 to 121400	Q-121301 to Q-121400	6,815.58
	Subtotal	₱20,659.48
	TOTAL DISALLOWANCE	₱78,886.77

The aforementioned original cash slips are being disallowed on account of the fact that what was examined by the independent auditor, Mr. Reyes were duplicate and triplicate copies thereof (Exhibit "R"). Also, such original slips are copies for the customers. Their being in the possession of the Petitioner is tantamount to non-issuance of receipt and gives rise to a reasonable doubt on whether purchases had indeed been transacted. It is the observation of this Court that the nearly three hundred original cash slips are consecutively numbered. Taken as it is, it is quite unbelievable that not one of the nearly 300 consecutive customer-purchasers of the Petitioner did not bother to get his or her original copy as receipt of purchase. It is the considered opinion of this Court thus that the original cash slips present themselves as preponderant evidence of the real probability that no purchase of medicines ever transpired.

It appears thus that only the amount of ₱59,573.23 represents the valid amount of 20% sales discounts that were granted to qualified senior citizens, computed as follows:

PER PETITIONER'S CLAIM	₱138,460.00
DISALLOWANCE	78,886.77
20% DISCOUNT TO SENIOR CITIZENS	₱ 59,573.23

It is important to note at that point that the computation of the refundable amout was based on the cost of the 20% discount in the light of the decision of the Court of Appeals in ***Commissioner of Internal Revenue vs. Elmas Drug Corporation, CA-G.R. SP No. 49946*** promulgated on October 19, 1999 where it ruled, thus:

> Section 4 (a) of R.A. 7432 clearly provides that private establishments, like the respondent in this case may claim the cost of the 20% discount as tax credit. If indeed the real intention of the legislators was to treat the full amount of the 20% discount as tax credit as argued by the respondent, why then would the final wordings of the law be "Provided, that private establishments may claim the COST as tax credit." (underscoring supplied). Hence, the Court of Tax Appeals erred in granting the partial motion for reconsideration when it resorted to legislative deliberations of R.A. 7432 and in considering the full amount of the 20% sales discount as tax credit.

With the preceding findings of this Court being taken into consideration, as well as the aforequoted ruling of the Court of Appeals, an overall recomputation of Petitioner's annual return for the year 1995 shows the amount of ₱5,273.00 as representing overpaid income tax, to wit:

SALES, Net		₱31,336,484.00
Add: Cost of 20% Discount to Senior Citizens		138,460.00
SALES, Gross		P31,474,944.00
COST OF SALES		
Merchandise inventory, beg	₱ 4,158,791.00	
Purchases	31,573,233.00	
Merchandise inventory, end	7,342,108.00	28,389,916.00
GROSS PROFIT		₱ 3,085,028.00
Add: Miscellaneous Income		30,272.00
TOTAL INCOME		₱ 3,115,300.00
Less: Operating expenses		2,617,191.00
NET INCOME BEFORE TAX		₱ 498,109.00
Less: Income subjected to final tax		15,614.00
NET TAXABLE INCOME		₱ 482,495.00
INCOME TAX (₱482,495.00 x 35%)		P 168,873.00

Less: TAX CREDIT Cost of 20% Discount to Senior Citizens (P59,573.23 x P28,389,916/31,474,944.00)	53,734.00
INCOME TAX PAYABLE	₱ 115,139.00
INCOME TAX ACTUALLY PAID	120,412.00
TAX REFUNDABLE/OVERPAID INCOME TAX	₱ 5,273.00

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE** in the amount of **₱5,273.00** to the Petitioner immediately. No costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
AMANCIO Q. SAGA
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