REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

BICOLANDIA DRUG CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6783

Members:

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

Promulgated:
MAR 2 1 2007

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DECISION

UY, *J*.:

This is a Petition for Review seeking judgment from this Court ordering respondent, Commissioner of Internal Revenue, to recognize the amount of P2,422,129.90 as tax credit in favor of petitioner, Bicolandia Drug Corporation, and to issue the corresponding tax credit certificate to petitioner in the amount of P1,968,059.00 allegedly representing 20% sales discounts granted to senior citizens on their purchases of medicines under Section 4 of Republic Act No. 7432[1] for the taxable year 1999.

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[1] *Otherwise known as **"An Act to Maximize The Contribution of Senior Citizen To Nation Building, Grant Benefits And Special Privileges And Other Purposes".***

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THE FACTS

As culled from the parties' respective pleadings, the evidence presented, both oral and documentary, as well as the matters contained in their Joint Stipulation of Facts and Issues filed on June 29, 2004,[2] these are the established facts of the case.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at No. 28 Shaw Boulevard, Pasig City. It is a retailer of medicines and other pharmaceutical products and a franchisee under the business name and style of "Mercury Drug". It is duly licensed to operate drug stores by the Bureau of Food and Drugs of the local government units where its principal office and drug stores are located and by other government agencies.

On the other hand, respondent Commissioner of Internal Revenue is the government official in-charge of the administration and enforcement of the internal revenue laws of the Philippines, with office at the BIR National Office Building, East Triangle, Diliman, Quezon City.

On April 14, 2000, petitioner filed its Income Tax Return ("ITR") for the year taxable 1999[3] declaring the following information:

Sales/Revenue	P	263,630,927.00
Less: Cost of Sales		240,927,367.00
Gross Income from Operation	**P**	**22,703,560.00**
Add: Non-Operating & Other Income		2,009,649.00
Total Gross Income		24,713,209.00
Less: Deductions	P	25,953,954.00
Taxable Income		(1,240,745.00)
Income tax		-
Minimum Corporate Income Tax (MCIT)		454,071.00
Less: Tax Credits - OSCA		(2,422,130.00)
Tax Payable (Overpayment)	**P**	**(1,968,059.00)**

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[2] *Joint Stipulation of Facts, Records, pp. 98-99, approved in the Resolution dated July 5, 2004, Records, p.104.*
[3] *Exhibit "C", Records, p. 179.*

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Through a Letter of Authority with No. 000021816 dated July 6, 2000[4] issued by respondent, petitioner's book of accounts and other accounting records for all internal revenue taxes from January 1, 1999 to December 31, 1999 were examined by respondent's duly authorized revenue examiners. Thereafter, petitioner received a Preliminary Assessment Notice ("PAN") dated June 18, 2002 with Assessment No. 065-99-000-269-677 assessing petitioner for deficiency income tax in the amount of P752,937.72; deficiency value-added tax ("VAT") in the amount of P3,690.14; deficiency withholding tax in the amount of P113,657.19; and compromise penalty in the amount of P10,000.00 or for a total amount of P880,285.05.[5]

On July 11, 2002, petitioner, by way of a Letter-Protest, questioned the assessment notice and protested, among others, the disallowance of the discounts it granted to senior citizens in the amount of P2,422,130.00 which it treated as tax credits pursuant to Republic Act ("R.A.") 7432.[6]

In response thereto contained in respondent's Letter dated October 28, 2002, petitioner's application of the amount of P2,422,130.00 as tax credit was disallowed for being unsubstantiated, and for the reason that said amount should not be claimed as a tax credit, but as a mere deduction from gross income in accordance with the provisions of Revenue Regulation No. 2-94; and respondent reiterated the demand that petitioner pay the total amount of P766,627.86 comprising of deficiency income tax (P752,937.72); deficiency

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[4] *Exhibit "O", Records, p. 277.*
[5] *Exhibit "P", Records, pp. 278-279.*
[6] *Exhibit "Q", Records, pp. 280-282.*

VAT (P3,690.14); and compromise penalty (P10,000.00). However, the deficiency withholding tax assessed against petitioner was cancelled.[7]

Petitioner requested for a reconsideration or reinvestigation of the subject assessment in its Letter of Protest dated April 11, 2003.[8] On August 27, 2003, petitioner received respondent's Reply-letter dated June 23, 2003[9] canceling the demand for payment on VAT and compromise penalty, but denying petitioner's request for reconsideration of the deficiency income tax assessment on the ground that the issue on whether the 20% discount granted to qualified senior citizens is pending adjudication before the Supreme Court, and for the meantime, the stand of the respondent that the discount is merely a deduction from the gross income of petitioner for income tax purposes and from sales for VAT and other percentage tax purposes remains.[10]

Hence, this Petition for Review filed on September 25, 2003.

In the Answer to the instant petition, respondent raises the following Special and Affirmative Defenses:

> "4. The assessment was issued in accordance with law and regulations.
>
> 5. All presumptions are in favor of the correctness of tax assessments.
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> 6. R. R. 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 gross income and not as credit as against its tax liability as petitioner insists.

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[7] *Exhibit "R", Records, pp. 283-284.*
[8] *Exhibit "S", Records, pp.285-291.*
[9] *Exhibit "T", Records, pp. 292-293.*
[10] *Paragraph 8, Joint Stipulation of Facts, Records, p. 100.*

7. With the accumulation of experience and growth of specialized capabilities by the agency charged with implementing a particular statute, it is now a 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 constitution and other laws. (Nestle Philippines, Inc. vs. CA, 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, R.R. 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. Petitioner has not filed a prior written claim for refund of the amount of P1,968,059.00 as required in Sec. 204 of the Tax Code. Hence, it is not entitled to the refund.

10. Petitioner allegedly filed its 1999 Annual Income Tax Return on April 14, 2000. The petition was filed on September 25, 2003 beyond the reglementary period of two (2) years to claim a refund as provided in Sections 204 and 229 of the Tax Code. Hence, the claim has prescribed."[11]

Petitioner filed a Reply on January 15, 2004 to respondent's Answer, alleging, among others, that "Section 204 of the National Internal Revenue Code of 1997 which refers to credit or refund [of] taxes erroneously or illegally received or penalties imposed, without authority, is inapplicable in the present case"; that the tax credit being claimed in this case was not erroneously or illegally received, nor were the penalties imposed without authority but that it arose from the discounts given by petitioner to senior citizens on the latter's purchases of medicines in compliance with R.A. 7432.

[11] *Answer filed on December 1, 2003, Records, pp. 63-64.*

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Further, petitioner contends that this petition "is not a claim for refund because there was an overpayment of taxes. As evidenced by its 1999 Annual Income Tax Return, petitioner already claimed in its Computation of Tax the tax credit it was legally entitled to under R.A. 7432 in the amount of P2,422,130.00. What the petitioner is claiming in its Petition is for respondent to recognize such right and to issue the corresponding tax credit certificate for the amount which was not applied or could no longer be applied because the tax credit is more than the tax liabilities".[12]

With the filing of respondent's Answer on December 1, 2003, and petitioner's Reply thereto on January 15, 2004, this case was set for pre-trial on February 6, 2004. Subsequently, the parties submitted their Joint Stipulation of Facts and Issues on June 29, 2004. Prior thereto, petitioner filed a Motion[13] on March 19, 2004 to avail of the services of an independent certified public accountant (CPA) in the presentation of voluminous documents. Said motion was granted by the Court during the hearing held on March 22, 2004 and Alfonso P. Katigbak was commissioned as the independent CPA who will examine the voluminous documents of the petitioner.[14] Mr. Katigbak correspondingly submitted his Report to this Court and testified thereon on June 29, 2005. Petitioner also presented two other witnesses, Marietta Calica and Cyre Clores, to prove its case.

When it was respondent's turn to present evidence on May 10, 2006, respondent's counsel manifested that she has no evidence to present. Thus,

[12] *Petitioner's Reply, Records p. 67-68.*
[13] *Records, p. 88-90.*
[14] *Records, p. 93.*

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the Court directed both parties' counsel to file their respective Memorandum.[15] Petitioner filed its Memorandum on June 20, 2006 stressing that based on the report of the commissioned Independent CPA, only P1,904,313.18 was properly granted by the petitioner to senior citizens as 20% discount on their purchases.[16]

Respondent likewise filed his Memorandum on July 5, 2006 reiterating that petitioner is liable to pay the amount of P680,273.50 plus surcharge and interest as deficiency income tax for the year 1999.[17] On July 14, 2006, this case was considered submitted for decision.

Hence, this Decision.

THE ISSUES

The parties stipulated the issues for this Court's consideration, as follows:

1) Whether or not petitioner filed a prior written claim for refund in the amount of P1,968,059.00 as required in Section 204 of the Tax Code;

2) Whether or not petitioner filed its petition within the reglementary period of two (2) years to claim a refund as provided in Sections 204 and 229 of the Tax Code;

3) Whether or not the 20% sales discount granted to qualified senior citizens on their purchases of medicines should be treated as tax credit under R.A. 7432 or as a deduction under R.R. No. 2-94;

4) Whether or not petitioner is liable to pay deficiency income tax for the year 1999 in the aggregate amount of P680,273.50 plus 25% surcharge and 20% interest;

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[15] Records, p. 324.
[16] Petitioner's Memorandum, Records, pp. 332-344.
[17] Respondent's Memorandum, Records, pp. 345–354.

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5) Whether or not petitioner is entitled to a refund or tax credit in the amount of P1,968,059.00 for the year 1999; and

6) Whether or not petitioner actually granted the total amount P2,422,130.00 allegedly representing discounts it granted to senior citizens on their purchases of medicines in the year 1999.[18]

The first, second and sixth issues are factual, while the third, fourth and fifth issues are legal. We shall first resolve the legal issues to determine whether petitioner's claim will prosper, and thereafter, resolve the factual basis for the same.

THE COURT'S RULING

Evidently, petitioner was originally assessed by the respondent for deficiency income tax in the amount of P680,273.50. In computing the assessment, respondent added the amount of P1,861,031.00, as "Miscellaneous Income" to petitioner's Gross Income from operation of P22,703,560.00, or a Total Gross Income of P24,564,591.00. The 20% sales discount allegedly granted to qualified senior citizens amounting to P2,422,130.00 was deducted from the Total Gross Income in order to get the "Adjusted Gross Income subject to MCIT" amounting to P22,142,461.00. Respondent applied the 2% Minimum Corporate Income Tax ("MCIT") to the amount of P22,142,461.00 to get the MCIT due amounting to P442,849.00, and thereafter added the following amounts: P110,712.25 (as 25% Surcharge), P110,712.25 (as 20% Interest) and P16,000.00 (as Compromise Penalty), which resulted in the total assessed amount of P680,273.50.[19]

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[18] *Records, p. 101.*
[19] *BIR Records, pp. 141-147.*

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Should the 20% sales discount granted to qualified senior citizens on their purchases of medicines be treated as tax credit under R.A. 7432 or as a deduction under R.R. No. 2-94?

We look into the provisions of Section 4 of R.A. 7432, to wit:

> "***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, hotel 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."

On the other hand, Section 2(i) of Revenue Regulations No. 2-94 provides that:

> "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, restaurant, 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 and other percentage tax purposes."

In the case of ***Commissioner of Internal Revenue vs. Central Luzon Drug Corporation***,[20] the Supreme Court finally settled the seeming conflict between the pertinent provisions of Republic Act No. 7432 and Revenue Regulation 2-94 when it ruled that the 20% sales discounts granted to qualified senior citizens may be claimed as a tax credit not merely as a deduction from gross income or gross sale. To quote:

> "The 20 percent discount required by law to be given to senior citizens is a tax credit, not merely a tax deduction from

[20] *G.R. No. 159647, April 15, 2005, 456 SCRA 414.*

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> 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. R.A. 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."

Moreover, the High Court, in the recent case of ***Commissioner of Internal Revenue vs. Bicolandia Drug Corporation (Formerly known as Elmas Drug Co.)***,[21] made this pronouncement in relation to Revenue Regulation No. 2-94, to wit:

> "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. "

Based on the aforequoted Supreme Court rulings, the 20% sales discounts granted to qualified senior citizens shall be treated as tax credits pursuant to Republic Act No. 7432 and not merely as deductions from gross sales as provided in Revenue Regulation No. 2-94.

Is petitioner liable to pay deficiency income tax for the year 1999 in the aggregate amount of P680,273.50 plus 25% surcharge and 20% interest

Petitioner's tax liability was computed by the respondent as follows:

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

Gross Income from operation per FS					P	22,703,560.00
	Add:	**Miscellaneous Income**				**1,861,031.00**
Total Gross Income					P	24,564,591.00
	Less:	**20% Discount (OSCA)**				**2,422,130.00**
Adjusted Gross Income subject to MCIT					P	22,142,461.00
Minimum Corporate Income Tax Due					P	442,849.00
	Add:	25% Surcharge	P	110,712.25		
		20% Interest		110,712.25		
		Compromise Penalty		16,000.00		237,424.50
TOTAL AMOUNT DUE					**P**	**680,273.50**

The Court notes that petitioner was being assessed for deficiency income tax in the amount of P680,273.50 mainly because of the imposition of Minimum Corporate Income Tax ("MCIT") by the respondent on petitioner's Gross Income, which is net of the 20% sales discount. Considering that the 20% sales discount may be properly claimed as tax credit, petitioner is no longer liable to the deficiency income tax because the amount of P1,904,313.18 can be credited against the MCIT due, computed as follows:[22]

Gross Income from operation per FS	P	22,703,560.00
Add: Miscellaneous Income		**1,861,031.00**
Total Gross Income	P	24,564,591.00
Minimum Corporate Income Tax Due (2%)	P	491,291.82
Less: 20% Discount (OSCA)[per CPA Report]		**1,904,313.18**
TOTAL AMOUNT PAYABLE (OVERPAYMENT)		**(1,413,021.36)**

Did petitioner actually grant the alleged discounts in the total amount of P2,422,130.00 to senior citizens on their purchases of medicines in the year 1999?

[22] *The "Miscellaneous Income" of P1,861,031.00 is included as part of Total Gross Income subject to MCIT because of petitioner's failure to raise this issue in this Petition which focuses mainly on the proper treatment of the 20% sales discount.*

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The Court commissioned Independent CPA reported that out of the amount of P2,422,130.00, only the amount P1,904,313.18[23] was properly granted by the petitioner to senior citizens as 20% discounts on their purchases. Giving due weight to the findings of the court commissioned independent CPA, and as manifested by petitioner in its Memorandum,[24] there is no dispute that only the amount of P1,904,313.18 was properly granted by the petitioner to senior citizens.

Did petitioner file a prior written claim for refund in the amount of P1,968,059.00; and if in the affirmative, was the claim filed within the two-year reglementary period as required in provided in Sections 204 and 229 of the Tax Code ?

We look into the pertinent provisions of Sections 204 and 229 of the 1997 National Internal Revenue Code (NIRC).

<u>**Section 204 (C) of the 1997 NIRC provides:**</u>

"**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. -** The Commissioner may—

(A) xxx

(B) Xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. <u>No credit or refund of taxes or penalties shall be allowed unless the taxpayer</u> **files in writing with the Commissioner a claim for credit or**

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[23] *Exhibit "Z", findings No. 3, Records, p. 297.*
[24] *Petitioner's Memorandum, p. 13, Records, p. 344.*

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> **refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis and underscoring supplied)*

Section 229 of the 1997 NIRC reads:

> "**SEC. 229. 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 excessively 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 filed after the expiration of two (2) 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 a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (*Underscoring supplied*)

Based on the aforementioned laws, it is clear that in order for a taxpayer to be entitled to a refund or tax credit, **he must first file a claim in writing within two years from payment of tax or penalty** with the Commissioner, or if the return shows an overpayment, **the same return shall be considered as a written claim for credit or refund.**

Furthermore, paragraph (C)(1) of Section 2.58.3 of Revenue Regulation 2-98 reads:

> "(1) If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefor, within two years after the payment of the tax (Ref. Secs. 204(C) and 229 of the Code, provided, however, that if the taxpayer has

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> indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer." (*Underscoring Ours*)

In other words, if the taxpayer indicated in his income tax return his option of either a cash refund or a tax credit for his excess taxes, such indication can be considered as his *formal written request* with regard to that option he marked. Thus, although the records of this case would readily reveal, and as correctly pointed out by the respondent, that there was no prior written claim for refund filed by the petitioner before the Commissioner of Internal Revenue, a close scrutiny of petitioner's 1999 income tax return filed on April 14, 2000 attached to the BIR Records of this case, discloses that upon its face, there was an overpayment of taxes amounting to P1,968,059.00;[25] that petitioner indicated its option to refund the excess tax credits for the year 1999 by marking an "x" in the option box "To be refunded" below Line 31 of its 1999 income tax return.[26]

Considering therefore the above laws and evidence presented, petitioner's income tax return for the year 1999 can now be considered as its formal *written claim for refund* pursuant to Section 204(C) of the 1997 NIRC.

The next question that confronts Us is whether petitioner's claim was filed within the requisite two-year reglementary period.

It is petitioner's submission that the instant case is not a claim for refund, thus, it is not governed by the prior filing of an administrative claim and

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[25] *BIR Records, pp. 1-11.*
[26] *Income Tax Return for taxable year 1999, BIR Records, p. 13.*

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the two (2)-year prescriptive period rules. Allegedly, the relief sought in this petition is a recognition by the respondent of its right to claim as tax credit the 20% sales discounts granted to qualified senior citizens, and for respondent to issue the corresponding tax credit certificate pertaining to the amount which was not applied, or could no longer be applied, because the tax credit is more than the tax liabilities. The tax credit that is being claimed in this case was not erroneously or illegally received, or penalties imposed without authority and that it arose from the discounts given by petitioner to senior citizens on the latter's purchases of medicines in compliance with R.A. 7432.

Petitioner's contention is partly meritorious in the sense that the subject claim for the issuance of a tax credit did not arise from erroneously or illegally paid or collected taxes as mentioned under Section 229 of the 1997 NIRC. Petitioner's subject application for the issuance of a tax credit arose from the 20% discount it granted to qualified senior citizens who purchased medicines from its drug stores as mandated by R. A. 7432.

However, We find the provisions of Section 204(C) of the 1997 NIRC applicable in this case insofar as it pertains to the general grant of authority to the Commissioner to compromise, abate, refund and **credit taxes**. And as provided therein, **no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the respondent Commissioner its claim for credit or refund within two (2) years after payment of the tax or penalty**.

Records show that petitioner's 1999 income tax return was filed on April 14, 2000. Counting two (2) years from that period, petitioner had until

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April 15, 2002[27] within which to file both its administrative and judicial claim for refund. As discussed earlier, petitioner's 1999 income tax return may be considered as its formal written claim for refund when it filed the same on April 14, 2000. However, this Petition was filed only on September 25, 2003, indubitably, well out of time. Consequently, the instant Petition will necessarily fail on the ground of prescription.

WHEREFORE, premises considered, the Petition for Review is **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[27] *April 14, 2002 fell on a Sunday.*

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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

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