REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

ST. WILLIAM DRUG CORPORATION,
Respondent.

CTA EB NO. 397
(CTA CASE No. 7439)

Present:

Acosta, *PJ*
Castañeda,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ*

Promulgated:

NOV 1 1 2008 Apolinario 2:05 p.m.

x - x

DECISION

ACOSTA, *PJ:*

The Case

This is an appeal, by way of a verified Petition for Review, from the Resolution of the Court of Tax Appeals Second Division[1] promulgated on May 20, 2008 denying the Commissioner's Motion for Partial Reconsideration of the Decision of the same Court dated March 13, 2008.

[1] Herein referred to as Court a quo.

The Facts

The pertinent facts which were aptly narrated in the Decision by the Court a quo are hereunder reproduced:

> "Petitioner[2] 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.
>
> 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.
>
> On April 15, 2004 and April 14, 2005, petitioner filed its Annual Income Tax Returns for 2003 and 2004, respectively.
>
> 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[3] 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: xxx
>
> 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."

After trial of the case, the Court a quo handed a Decision on March 13, 2008 partially granting the claimed tax credit. In disposing the merits of the case, the said Court addressed each of the issues jointly stipulated by the parties and ruled that the administrative claim and the Petition for Review were both filed within the prescriptive period; the 20% sales discounts under RA No. 7432 shall be treated as tax credits instead of deduction from gross income; the 20% sales discounts granted to

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[2] Respondent herein
[3] Petitioner herein

senior citizens pursuant to RA No. 9257 shall be treated as deduction from gross income and not as tax credits; out of P804,781.22 sales discounts granted, only P710,704.18 thereof, net of VAT, represents as valid 20% sales discounts to senior citizens for the years 2003 and 2004; and respondent 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 gross income instead of as tax credits and as a result respondent overpaid its income taxes in the respective amounts of P290,801.04 and P40,044.28, totaling P330,845.32 for the same periods. The *fallo* of the questioned Decision reads:

> "**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."

Unfazed with the aforesaid decision, petitioner sought a reconsideration by filing a "Motion for Partial Reconsideration" on April 2, 2008 but the same was denied by the Court a quo in the assailed Resolution promulgated on May 20, 2008, the dispositive portion thereof reads:

> "**IN VIEW OF THE FOREGOING**, the instant Motion is hereby **DENIED** for lack of merit."

On June 10, 2008, petitioner filed a "Motion for Extension of Time to File Petition for Review" before this Court and the same was favorably granted on June 11, 2008. On June 24, 2008, petitioner filed, within the extended period, this instant Petition for Review which was deemed submitted for decision on August 11, 2008 after the respondent filed the required "Comment/Opposition [to the Petition for Review]".

Issue

For the consideration of this Court is the lone issue presented by petitioner in her Petition for Review of "whether or not respondent is entitled to the issuance of tax credit certificate in the reduced amount of P330,845.32 representing alleged unused tax credits/income tax overpayment arising from the 20% sales discounts granted to qualified senior citizens for taxable years 2003 and 2004."

Parties' Arguments

Petitioner's arguments

Aside from reiterating the taxation doctrines and jurisprudence in her Motion for Partial Reconsideration, petitioner argued that there is no income tax overpayments because only P110,756.84 is validly supported income tax payments; the overpayment stated in the assailed decision might create an impression on respondent that it could convert the granted tax credit as a tax refund which could not be done because tax refund is not available here. Accordingly, if there is a tax liability, tax credit can be applied while if there is none, tax credit cannot be used but it may be carried over in the future and if business continues to operate at a loss compelling it to close shop and no other taxes are due, tax credit can never be applied and will be lost altogether since the intent of Congress is merely to apply the discount given to senior citizens as tax credit, any unused tax credit can never be converted into a tax refund in the future thus, respondent's claim for refund will never prosper.

Respondent's arguments

In its Comment/Opposition, respondent stated that petitioner's arguments and discussions made in her Petition for Review are factual rehash and reiteration of its motion for reconsideration that were already passed upon by the Court a quo; petitioner's general assertion without any purpose to serve cannot and should not, in law, be given any probative value to warrant the reversal of the findings of the Second Division; and in insisting upon the issue raised in this Petition, it only precedes that the petitioner still wants to invoke the application of Revenue Regulation No. 2-94 that was already declared null and void by the Supreme Court, departing in the process to the well settled jurisprudence that "a nullity produces no effect whatsoever" *(Quod Nullum Est, Nullum Producit)*. Accordingly, petitioner cannot validly invoke Revenue Regulation No. 2-94 already declared void by the Supreme Court and in the eyes of the law, for all legal intents and purposes, this never existed following the latin maxim *Quae ab initio non valent, ex post fact convalescere non possunt*.

The Court's Ruling

This instant Petition for Review is bereft of merit.

A painstaking evaluation of the substance of this Petition will reveal that except for the arguments concerning the substantiation of the income tax payments and the apprehension of the conversion of tax credit to a tax refund, petitioner merely reiterated the taxation doctrines and jurisprudence which were already pointed out in her Motion for Reconsideration, without making application of or relating such doctrines and jurisprudence to the facts of the case. Such useless reference of doctrines and jurisprudence to buttress her side were already squarely resolved in the assailed Resolution of the Court a quo, *viz*:

> "After carefully reading the Motion, the Court finds that respondent merely cited taxation doctrines and jurisprudence in support of the aforequoted ground but without necessarily showing how they are applicable to the instant case. In asserting that petitioner failed to prove its entitlement to the issuance of tax credit certificate, respondent failed to explain with clarity what documents should petitioner have presented; which procedure petitioner failed to comply; and other matters showing that petitioner failed to prove its claim. Contrary to respondent's assertions, petitioner was able to successfully prove its entitlement to the claim when it substantiated the same with cash slips/invoices, special record books, summaries of sales and sales discounts, audited financial statements, income tax returns, cash receipts books, and subsidiary/general ledgers."

The argument that there is no income tax overpayment because only P110,756.84 is validly supported as income tax payments is only raised for the very first time in this appeal. This argument should have been raised in her Motion for Reconsideration before the Court a quo. Settled is the rule that "theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, because this would be offensive to the basic rules of fair play, justice and due process.[4]

The other argument of the petitioner relating her worries that the overpayment stated in the assailed decision might create an impression on the respondent that the tax credit granted could be converted as a tax refund must likewise fail. In ***Secretary Teofisto Guingona, Jr. et al*** *versus* ***Court of Appeals***,[5] the Supreme Court held that "a mere apprehension, does not give rise to a justiciable controversy."

An accurate reading of the assailed Decision will enlighten petitioner as to its true message. In the said Decision, the Court a quo granted respondent's claimed tax credit and ordered petitioner to issue a tax credit certificate in favor of the respondent in a reduced amount of P330,845.32.

Worthy to emphasize that "the tax credit that is contemplated under RA No. 7432 is a form of just compensation.[6] As a result of the 20 percent discount imposed by RA 7432, respondent becomes entitled to a *just compensation*. This term refers not only to the issuance of a *tax credit certificate*, but also to the promptness in its release.[7]

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[4] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007
[5] G.R. No. 125532, July 10, 1998
[6] Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, G.R. No. 148512, June 26, 2006.
[7] Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, G.R. No. 159647, April 15, 2005.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Resolution dated May 20, 2008 of the Court a quo denying petitioner's Motion for Partial Reconsideration of the Decision dated March 13, 2008 is hereby **AFFIRMED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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 Justice