REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NORTHERN LUZON DRUG CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 345
(C.T.A. Case No. 7207)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

Promulgated:
JUN 0 3 2008 GPApolinario
10:09 a.m.

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DECISION

BAUTISTA, J.:

Before Us is a Petition for Review[1] filed by herein petitioner on December 28, 2007, praying for the reversal of:

(1) the Decision dated August 9, 2007 of the Second Division of the Court ("Court in Division") in C.T.A. Case

[1] *Rollo*, pp. 6 - 38, with Annexes.

No. 7207, denying herein petitioner's claim for refund in the amount of Thirteen Million Three Hundred Twenty Thousand Four Hundred Twelve Pesos and Forty-Nine Centavos (P13,320,412.49), representing the twenty percent (20%) sales discounts granted to qualified senior citizens on their purchases of medicines during the taxable year 2002, pursuant to 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," ("RA 7432"); and

(2) the Resolution dated November 20, 2007 denying herein petitioner's Motion for Reconsideration.

Antecedent Facts

The antecedent facts, as narrated by the Court in Division in its Decision, are as follows:

"Petitioner Northern Luzon Drug Corporation is a domestic corporation organized and existing under the laws of the Philippines, with principal office address at No. 28 Shaw Boulevard, Pasig City. Respondent is the duly appointed Commissioner of Internal Revenue, with office address at BIR National Office Building, Diliman, Quezon City, where he may be served with summons, notices and other legal processes.

Petitioner is a retailer of medicines and other pharmaceutical products and operates fourteen (14) drugstores, as a franchisee under the business name and style of 'Mercury Drug.' It is duly licensed to operate drugstores by the Bureau of Food and Drugs, the local government units where the drugstores are located, the Department of Trade and Industry and the Bureau of Internal Revenue.

During the period from January to December 2002, petitioner granted twenty percent (20%) sales discounts to qualified senior citizens on their purchases of medicines, in compliance with *RA 7432* and its Implementing Rules and Regulations.

On April 13, 2005, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of P13,320,412.49 equivalent to the twenty percent (20%) sales discounts granted to senior citizens in the year 2002.

For failure of the respondent to act on the request and in order to toll the running of the two-year prescriptive period, petitioner filed the instant Petition for Review on April 14, 2005.

In his Answer, respondent alleged by way of special and affirmative defenses, to wit:

> '6. The claim for refund is still under examination by respondent's Bureau;
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> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;
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> 8. The grant of a claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
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> 9. The correct interpretation and enforcement of the provisions on the tax credits of Republic Act No. 7432, entitled 'An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes' is contained in Revenue Regulations No. 2-94, specifically, Section 2, paragraph (I) so states:
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> > (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 cinema houses, concert halls, circuses, carnivals and other similar places of cultures,

leisure and amusement, which discount shall be deducted by the said establishment from their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes.

10. The provision under Republic Act No. 7432, which states that the 20% sales discounts on purchases or medicines by senior citizens be treated as a tax credit is a misnomer as it runs counter to the solemn duty of the government to collect all taxes;

11. The power of taxation is a high prerogative of sovereignty. 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 Corporation vs. Gorospe, G.R. No. 46787, Aug. 2, 1991);

12. In Statutory construction, in cases of ambiguities, the principle that the contemporaneous construction of a statute given by executive officers of the government whose duty is to execute it is entitled to great respect and should ordinarily control the construction, is so firmly embedded in our jurisprudence that no authorities need be cited to support it. (Phil. Assoc. of Free Labor Unions vs. BLR). Executive Officials are presumed to have familiarized themselves with all the consideration pertinent to the meaning and purpose of the law and to have formed an independent, conscientious and competent expert opinion thereon (Richard vs. Drewry-Hughes Co., 94 S.E. 989).'

Petitioner presented Romeo V. David, Laura R. Gison, and Romulo B. Espinosa, as witnesses, and documentary evidence, marked as *Exhibits 'A' to 'CC'*, inclusive of submarkings, which were all admitted by the Court except *Exhibit 'F'* for failure to present the original for comparison.

On the other hand, respondent submitted the case for decision, without presenting any evidence.

> Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Considering that only petitioner filed its memorandum, the case was deemed submitted for decision on June 28, 2007."[2] *(Citations omitted)*

The Ruling of the Court in Division

On August 9, 2007, the Court in Division rendered a decision denying the Petition for Review of petitioner.

In the Decision, the Court in Division resolved first the issue of whether the 20% sales discounts granted to qualified senior citizens should be treated as tax credits deductible from the tax due, as provided under RA 7432, or merely as deductions from the gross sales, pursuant to Section 2, paragraph (I) of Revenue Regulations No. 2-94 ("RR 2-94"). It declared that the 20% sales discounts granted to qualified senior citizens should be treated as tax credits, conformably to RA 7432, and not merely as deductions from the gross sales, as provided in RR 2-94. It cited the cases of *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*[3] and *Commissioner of Internal Revenue v. Bicolandia Drug Corporation,*[4] where the Supreme Court found RR 2-94 null and void for failing to conform to the law it sought to implement.

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[2] *Rollo*, pp. 18 – 21, Assailed Decision dated August 9, 2007.
[3] G.R. No. 159647, 456 SCRA 414, April 15, 2005.
[4] G.R. No. 148083, 496 SCRA 176, July 21, 2006.

The Court in Division then proceeded to discuss the issue of whether or not petitioner is entitled to recover, by way of tax credit, the sum of P13,320,412.49, representing the 20% sales discounts to qualified senior citizens for taxable year 2002.

Petitioner, in order to prove its claim, presented its Annual Income Tax Return for taxable year 2002,[5] Audited Financial Statements for the taxable year ended December 31, 2002,[6] Special Record Book,[7] Summary of Sales and Summary of Sales Discounts granted to senior citizens for the taxable year 2002,[8] and Cash Slips evidencing purchases of medicines by senior citizens for the year 2002.[9] The independent CPA found that petitioner has a total of P11,033,493.74 substantiated sales discounts granted to senior citizens out of the claimed amount of P13,320,412.49.

But despite this finding, the Court in Division denied petitioner's claim, as it found the evidence presented by petitioner insufficient to prove that the amount subject of the claim has been incorporated in petitioner's declared income tax for the taxable year 2002. The Court in Division pointed out that petitioner should have presented its detailed

[5] *Records*, pp. 113 – 122, Exhibit "C."
[6] *Id.*, pp. 123 – 130, Exhibit "D."
[7] *Id.*, p. 108, Exhibit "X."
[8] *Id.*, pp. 187 – 188, Exhibits "T" and "U."
[9] *Id.*, p. 108, Exhibit "Y."

General Ledgers, Sales Books, and Cash Receipts Books to show which part of the reported sales comprised the gross sales to senior citizens.

It thus disposed of the case as follows:

> "**WHEREFORE**, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.
>
> SO ORDERED."[10]

On September 3, 2007, herein petitioner filed a Motion for Reconsideration[11] of the Decision.

In the Motion, petitioner contended that the gross sales of P511,338,750 for the taxable year 2002 included all kinds and types of sales of petitioner for 2002. It also argued that the issue in the instant case is the amount of tax credit, and not the total gross sales of petitioner. As such, petitioner insisted that it is not required to present evidence on the composition of its gross sales.

On November 20, 2007, the Court in Division issued a Resolution denying the Motion for Reconsideration.[12]

The Issue

Hence, the instant recourse where petitioner raises the sole issue of "whether or not the Honorable Court of the Second Division gravely erred and has committed grave abuse of discretion amounting to lack or

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[10] *Rollo*, p. 30, Assailed Decision dated August 9, 2007.
[11] *Id.*, 32 – 36.
[12] *Id.*, pp. 37 – 38, Assailed Resolution dated November 20, 2007.

in excess of jurisdiction in dismissing petitioner's claim for failure to show that its gross sales to senior citizen were declared as part of its taxable income."[13]

No Comment was filed by respondent. Both parties likewise failed to file their respective Memoranda within the period prescribed by the Court.

Accordingly, on May 6, 2008, the case was submitted for Decision.[14]

The Ruling of the Court En Banc

The Petition for Review has no merit.

We begin with the familiar rule that tax refunds partake the nature of tax exemptions and are, thus, construed *strictissimi juris* against the person or entity claiming the exemption, as such, the burden in proving the claim for refund necessarily falls on the taxpayer.[15]

Petitioner, in the case at bar, maintains that the issue of whether or not the 20% sales discounts to senior citizens were included in its Annual Income Tax Return was never an issue in this case and, therefore, not part of what petitioner must prove. It posits that this

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[13] *Rollo*, p. 11.
[14] *Id.*, p. 46.
[15] Far East Bank and Trust Company v. Commissioner of Internal Revenue, G.R. No. 138919, May 2, 2006, 488 SCRA 473 (2006).

issue goes beyond the issue of whether or not petitioner is entitled to a tax credit.

In any case, petitioner claims that it was able to present evidence showing that its sales to senior citizens were declared part of its gross sales. According to petitioner, its Finance Manager, Mr. Romeo David, testified that all the sales of petitioner were submitted to the Head Office for collation, that all these sales were summarized in the Schedule of Sales of petitioner which are declared and reflected in its Annual Income Tax Return, and that the 20% sales discounts granted to senior citizens were properly shown in page 2 of its Audited Financial Statement. Petitioner further claims that the testimony of their witness, Mr. David, was never questioned nor controverted by respondent.

We are not persuaded.

At the outset, We do not subscribe to the view of petitioner that there is no need for it to prove that the 20% sales discounts to senior citizens were included in its Annual Income Tax Return.

The issue of whether or not petitioner is entitled to recover, by way of tax credit, the sum of P13,320,412.49, representing the 20% sales discounts to qualified senior citizens for taxable year 2002, logically includes the issue of whether or not the said 20% sales discounts to qualified senior citizens for taxable year 2002 were included in petitioner's Annual Income Tax Return.

It must be stressed that since petitioner is claiming a tax credit certificate representing the 20% sales discounts it granted to its qualified senior citizen clientele, it is necessary for it to show that its sales to senior citizens (inclusive of the 20% sales discounts) were indeed reported as part of its taxable income for 2002 and that the 20% sales discounts were really treated as prepaid tax.[16]

In *Roxas Food Ventures, Inc. v. Commissioner of Internal Revenue*,[17] We said that the claimant has the burden of proving that the net sales to senior citizens were in fact declared in its Income Tax Return for the taxable year, and that the best evidence are the claimant's book of accounts, such as the detailed general ledger, cash receipts books, sales book, or the special book for sales to senior citizens.

In this case, petitioner only presented the following:

(1) Annual Income Tax Return for taxable year 2002;[18]

(2) Audited Financial Statements for the taxable year ended December 31, 2002;[19]

(3) Special Record Book;[20]

(4) Summary of Sales and Summary of Sales Discounts granted to senior citizens for the taxable year 2002;[21] and

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[16] Bicolandia Drug Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 7210, July 23, 2007 and Southern Luzon Drug Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 7208, July 30, 2007.
[17] C.T.A. EB Case No. 263 (C.T.A. Case No. 6947), May 21, 2007.
[18] *Supra*, note 5.
[19] *Supra*, note 6.
[20] *Supra*, note 7.

(5) Cash Slips evidencing purchases of medicines by senior citizens for the year 2002.[22]

Hence, petitioner failed to establish that the gross sales made to senior citizens (inclusive of the 20% sales discount) were declared as part of its taxable income.

In fact, in denying the claim, the Court in Division in its Decision explained that:

> "Petitioner failed to present evidence that the gross sales to senior citizens were included in its total sales. Mere summaries of its sales are not sufficient evidence, as said documents are mere listings of petitioner's sales, such that the Court cannot determine whether the 20% discounts granted to senior citizens formed part of petitioner's declared income. **Petitioner should have presented its detailed General Ledgers, Sales Books and Cash Receipts Books to show which part of the reported sales comprised the gross sales to senior citizens.** The detailed breakdown would have enabled the Court to verify and determine whether the gross sales to senior citizens actually formed part of the gross sales reported in the Annual Income Tax Return to which the tax credit will be based. Thus, without the necessary books of account, the Court cannot ascertain whether the amount subject of the claim has been incorporated in its declared income tax for the taxable year 2002."[23] *(Emphasis supplied)*

Petitioner should have taken the cue from the Court in Division and, on reconsideration, presented as evidence its detailed General Ledgers, Sales Books, and Cash Receipts Books to show which part of the reported sales comprised the gross sales to senior citizens. Failing to do so, it has lost the opportunity to prove that the 20% sales discounts to

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[21] *Supra*, note 8.
[22] *Supra*, note 9.
[23] *Rollo*, pp. 28 – 29.

qualified senior citizens for taxable year 2002 formed part of its Annual Income Tax Return for the taxable year 2002.

Moreover, contrary to the claim of petitioner, Mr. David, in his Judicial Affidavit, never declared that the 20% sales discounts granted to senior citizens formed part of its Annual Income Tax Return.[24]

All told, We find no error nor grave abuse of discretion on the part of the Court in Division.

In closing, We find it fitting to reiterate that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[25] Hence, in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division must be accorded deference and respect.[26]

WHEREFORE, the instant Petition for Review is hereby **DISMISSED.** Accordingly, the Decision dated August 9, 2007 and Resolution dated November 20, 2007 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[24] *Records*, pp. 189 – 190, Exhibit "V."
[25] El Greco Ship Manning and Management Corporation v. Commissioner of Customs, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007.
[26] Union Refinery Corporation v. Commissioner of Customs, C.T.A. EB NO. 149 (C.T.A. Case No. 5917), January 15, 2007.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice