Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

CENTRAL LUZON DRUG CORPORATION, Petitioner,	EB Case No. 395 (CTA Case No. 7447)
- versus -	Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 24 2009 2:05 p.m.

x---x

DECISION

CASANOVA, J.:

This is a Petition for Review filed by Central Luzon Drug Corporation (CLDC for brevity) pursuant to paragraph 2, Section 18 of RA No. 1125, as amended, seeking the review and nullification of the Decision dated January 23, 2008 (the "Assailed Decision")[1] and Resolution dated May 7, 2008 (the "Assailed Resolution")[2] both of the *CTA Second Division*. The Assailed Decision dismissed, with finality, petitioner's claim for tax credit or refund of the twenty percent (20%) sales discount/s it granted to qualified senior citizens for the year 2003, in compliance with RA No. 7432. The Assailed Resolution, on the other hand,

[1] CTA En Bank Rollo, pp. 16-30
[2] Ibid, pp. 37-38

denied petitioner's Motion for Reconsideration dated February 15, 2008, for lack of merit.

The facts of the case, as culled from the records, are as follows:

> "Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal office address at No. 28 Shaw Boulevard, Pasig City.[3]
>
> Respondent, on the other hand 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.[4]
>
> Petitioner is a retailer of medicines duly licensed, by the Bureau of Food and Drugs, the local government units where its drugstores are located, and the Department of Trade and Industry, to operate its twenty four (24) drugstores situated in various locations in the Philippines.[5]
>
> During the period from January to December 2003, petitioner allegedly granted twenty percent (20%) sales discounts to qualified senior citizens on their purchase of medicines, in compliance with RA 7432 and its implementing Rules and Regulations.[6]
>
> On April 14, 2004, petitioner filed its Annual Income Tax Return for taxable year 2003 and treated its senior citizens discount as prepaid tax credit.[7]
>
> On April 12, 2006, petitioner filed with respondent a request for the issuance of a tax credit certificate in the amount of ₱44,034,572.14 equivalent to the twenty percent (20%) sales

[3] Par. 1, Joint Stipulation of Facts (JSF), Docket, p. 63
[4] Par. 1, Petition for Review, Docket, p. 1
[5] Par. 2 & 3, JSF, Docket, p. 63
[6] Decision, CTA En Banc Rollo, p. 18
[7] Ibid

discounts granted by petitioner to qualified senior citizens during the year 2003, in compliance with RA 7432.[8]

On April 17, 2006, petitioner filed with this Court a Petition for Review in order to toll the running of the two-year prescriptive period since respondent failed to act on petitioner's request for issuance of tax credit certificate in the amount of P44,034,572.12.

In her Answer filed on June 2, 2006, respondent interposed the following Special and Affirmative Defenses:

> "5. The claim for refund is still under examination by the Respondent Bureau of Internal Revenue;
>
> 6. The burden of proof is upon the Petitioner to prove that it is entitled to the claim for refund;
>
> 7. The grant of a claim for refund is tantamount to an exemption from taxation which should be strictly construed against the taxpayer and in favor of the government;
>
> 8. 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 (1) so states:
>
>> "(1) Tax Credits – refers to the amount representing the twenty percent (20%) discount granted to a qualified senior citizen by all establishments relative to their utilization of transportation services, hotels and seminar lodging, cinema houses, concert halls, circuses, carnivals and other similar places of cultures, leisure and amusement, which discount shall be

[8] Ibid

> deducted by the said establishment for (sic) their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes."

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

10. 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, August 2, 1991);

11. In Statutory Construction, in cases of ambiguities, the principle that the contemporaneous construction of 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, it is so firmly embedded in our jurisprudence that no authorities need be cited to support it (Phil. Assoc. of Free Labor Unions vs. BIR). Execute (sic) official are presumed to have familiarized themselves with all consideration pertinent to the meaning and purpose of the law and to have formed an independent 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)."

On August 15, 2006, the parties filed a Joint Stipulation of Facts[9] and stipulated on the following issues for the Court's Resolution:

> 1. Whether the 20% discount granted to senior citizens on their purchase of medicines should be treated as tax credit deductible from the tax due as provided under R.A. 7432 or merely as a deduction from gross income as provided under Revenue Regulations No. 2-94.
>
> 2. Whether or not Petitioner actually granted and is entitled to the issuance of a tax credit certificate in a total amount of ₱44,034,572.14 representing the discounts it granted to senior citizens on their purchases of medicines in the year 2003."

After trial on the merits, the *CTA Second Division* promulgated a Decision on January 23, 2008, the dispositive portion of which reads as follows:

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

Not satisfied with the above decision, petitioner filed its Motion for Reconsideration[10] on February 21, 2008, which motion was denied by this Court for lack of merit in its Resolution[11] promulgated on May 7, 2008.

[9] Docket, pp. 63 & 64
[10] CTA En Banc Rollo, pp. 31-36
[11] Ibid, pp. 37-38

Petitioner, hence, filed the instant Petition for Review on June 11, 2008, raising the following sole issue:

> "WHETHER OR NOT THE HONORABLE COURT OF THE SECOND DIVISION GRAVELY ERRED AND HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DISMISSING PETITIONER'S CLAIM FOR FAILURE TO SHOW THAT ITS GROSS SALES TO SENIOR CITIZENS WERE DECLARED AS PART OF ITS TAXABLE INCOME."

In support of the Petition, petitioner presented the following argument:

> "THE PETITIONER WAS ABLE TO PROVE THAT ITS GROSS SALES IN THE AMOUNT OF ₱914,929,307.64 INCLUDED ALL ITS SALES INCLUDING THE SALE TO SENIOR CITIZENS."

On September 1, 2008, respondent filed his Comment[12] to petitioner's Petition for Review.

Pursuant to the Resolution[13] of the *CTA En Banc* dated October 6, 2008, ordering both parties to submit their respective memorandum, petitioner failed to file its memorandum within the period prescribed by the Court while respondent's counsel filed a Manifestation and Motion[14] on October 22, 2008, stating, among others, that he is adopting his Comment dated August 29, 2008, as his memorandum.

---

[12] Supra, pp. 54-64
[13] Supra, pp. 66-67
[14] Supra, pp. 68-69

In a Resolution[15] promulgated on December 3, 2008, the CTA En Banc deemed the case submitted for resolution.

Hence, this Decision.

The main issue presented before Us for resolution is whether or not petitioner was able to prove that its gross sales to senior citizens were declared as part of its taxable income for the taxable year ending 2003.

Petitioner contends that "the documents and the witnesses presented by the Petitioner were able to show that it really granted the discount. The amount of discount form part of the Annual Income Tax Return and Audited Financial Statement of Petitioner."[16]

We do not agree.

As aptly discussed by the *CTA Second Division*, and, We quote, with approval, to wit:

> "Petitioner's contention that its claim has been properly substantiated cannot be sustained. To be entitled to the claim sought, petitioner must first establish that the gross sales made to senior citizens (inclusive of the 20% sales discount) were declared as part of its taxable income. The evidence adduced by petitioner shows that petitioner presented Cash Slips and Special Record Books to prove the grant of twenty percent (20%) discount. However, despite the existence of these documentary evidence, petitioner's claim must still be denied, as We cannot determine from the records whether petitioner's gross sales to senior citizens were really declared as part of its total sales amounting to

[15] Supra, p. 71
[16] Petition for Review, par. 4, p. 8; CTA En Banc Rollo, p. 12

> P914,929,308.00, as reflected in its annual income tax return for the taxable year ending December 31, 2003. 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. As such, 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 its 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 2003."[17]

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed January 23, 2008 Decision and May 7, 2008 Resolution of the *CTA Second Division*. What the instant petition seeks is for the *Court En Banc* to view and appreciate the discussions/arguments in their own pleadings, which, unfortunately, had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

---

[17] Decision, CTA En Banc Rollo, pp. 26-28

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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