REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BICOLANDIA DRUG CORPORATION,
Petitioner,

C.T.A. EB No. 320
(C.T.A. Case No. 7210)

-versus-

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 2 2 2008 ; 1:40PM

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DECISION

CASTAÑEDA, JR., J.:

THE CASE

On appeal are the Decision dated July 23, 2007 dismissing the petition for review, due to insufficiency of evidence, and the Resolution dated October 3, 2007 denying petitioner's motion for reconsideration for lack of merit, both issued by the Court's First Division, in the case entitled, "Bicolandia Drug Corporation vs. Commissioner of Internal Revenue" docketed as CTA Case No. 7210.

THE FACTS

Bicolandia Drug Corporation ("petitioner"), a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines is engaged in the sale of pharmaceutical products. The Commissioner of Internal Revenue ("respondent"), on the other hand, is vested by law to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes.

On April 15, 2003, petitioner filed its 2002 annual income tax return ("ITR") and treated the amount of P8,133,836.59 as pre-paid tax credit allegedly representing the 20% sales discounts granted to qualified senior citizens on their purchase of medicines pursuant to Republic Act ("R.A.") No. 7432 and its Implementing Rules and Regulations.[1]

On April 13, 2005, the petitioner applied with the Bureau of Internal Revenue ("BIR") for the issuance of a tax credit certificate in the amount of P8,133,836.59, equivalent to the 20% sales discounts allegedly availed

[1] Exhibit C.

by qualified senior citizens on their purchase of medicines during the taxable year 2002.[2]

On April 14, 2005, the petitioner appealed by way of a petition for review docketed as CTA Case No. 7210 praying for the issuance of a tax credit certificate in the amount of P8,133,836.59 covering taxable year 2002 before the Court's First Division.

In the Decision dated July 23, 2007, the Court in Division dismissed the petition due to insufficiency of evidence.

Unfazed, the petitioner moved for a reconsideration of the Decision dated July 23, 2007, and prayed for the issuance of tax credit certificate in the reduced amount of P5,186,883.74 which the Court in Division denied in the Resolution dated October 3, 2007.

ISSUE

Petitioner sought redress with this Court *en banc* by filing a petition for review ascribing the sole error committed by the Division:

> WHETHER OR NOT THE PETITION SHOULD BE DISMISSED FOR THE ALLEGED FAILURE OF THE PETITIONER TO SHOW THAT ITS GROSS SALES TO SENIOR CITIZENS WERE DECLARED AS PART OF ITS TAXABLE INCOME[3]

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[2] Exhibit E.
[3] Rollo, p. 11.

The respondent failed to file any comment to the petition within the period fixed by this Court.

RULING

This Court *en banc* takes judicial notice that R.A. No. 9257[4] which took effect on March 21, 2004 now considers the 20% sales discounts granted to senior citizens as a tax deduction from the gross income incurred by private establishments engaged in selected transportation services, hotels and similar lodging establishments, restaurants and recreation centers, medical services, dental services, entities involved in funeral and burial services and sale of medicines.[5] However, since the instant case involves the taxable year 2002, the applicable statute is R.A. 7432[6] which entitles qualified senior citizens to 20% sales discount from private establishments such as those entities engaged in the sale of medicines. Considering that petitioner sells pharmaceutical products to the public, it may claim the cost or the 20% discount extended to qualified senior citizens in their purchase of medicines as tax credit.

Section 4(a) of R.A. 7432 provides:

> Sec. 4. Privileges for the Senior citizens. – The senior citizens shall be entitled to the following;

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4 Expanded Senior Citizens Act of 2003.
5 *Carlos Superdrug Corp. vs. Department of Social Welfare and Development (DSWD)*, G.R. 166494, June 29, 2007, 526 SCRA 130.
6 "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes" which took effect on May 14, 1992.

> a) the grant of twenty percent(20%) discount from all establishments relative to utilization of transportation services, hotels 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; x x x

Black's Law Dictionary explained the distinction between a tax credit, and a tax deduction in the following manner:

> Tax credit is defined as the amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability. A tax credit reduces the taxpayer's liability x x x, compared to a deduction which reduces taxable income upon which the tax liability is calculated. A credit differs from deduction to the extent that the former is subtracted from the tax while the latter is subtracted from income before the tax is computed.[7]

The Supreme Court further clarified the nature of a tax credit and a tax deduction in the case of *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation* [8]where it was ruled, *viz*:

> Although the term is not specifically defined in our Tax Code, tax credit generally refers to an amount that is "subtracted directly from one's total tax liability." It is an "an allowance against the tax itself" or "a deduction from what is owed" by a taxpayer to the government. Examples of tax credits are withheld taxes, payments of estimated tax, and investment tax credits.
>
> Tax credit should be understood in relation to other tax concepts. One of these is tax deduction – defined as a subtraction "from income for tax purposes," or an amount that is "allowed by law to reduce income prior to [the] application of the tax rate to compute the amount of tax which is due." An example of a tax deduction is any of the allowable deductions enumerated in Section 34 of the Tax Code. gc

[7] *Commissioner of Internal Revenue vs. Bicolandia Drug Corporation*, G.R. No. 148083, July 21, 2006, 496 SCRA 176 citing Black's Law Dictionary, Centennial Edition, p.1461 (1991).
[8] G.R. No. 159647, April 15, 2005, 456 SCRA 414.

> A tax credit differs from a tax deduction. On the one hand, a tax credit reduces the tax due, including –whenever applicable –the income tax that is determined after applying the corresponding tax rates to taxable income. A tax deduction, on the other, reduces the income that is subject to tax in order to arrive at a taxable income. To think of the former as the later is to avoid, if not entirely confuse, the issue. A tax credit is used only after the tax has been computed; a tax deduction, before.[9]

Before a taxpayer may claim a tax credit for the 20% sales discount under R.A. 7432, it must first establish that the related gross sales to qualified senior citizens formed part of its taxable income.

According to the petitioner, it was able to prove that the gross sales supported by cash slips in the amount of P5,186,833.74 cover all its sales including sales to senior citizens.

Finance Manager Romeo David testified that sales of the corporation are summarized in the schedule of sales and declared in the book of accounts, annual 2002 ITR and audited financial statements showing the amount of sales per branch and the total amount of sales in the amount of P435,089,499.95 from January to December 2002. The total sales referred in the schedule of sales and annual ITR include all types of sale such as regular sales, discounted sales, bulk sales, small sales and sale by piece. ge

[9] Id., at pp. 427-429.

Mr. David also attested that the amount of prepaid tax consisting of the 20% sales discount granted to senior citizens was properly shown in audited financial statements.

The testimony of Mr. David was never subjected to cross-examination nor questioned by the respondent. Thus, it was clearly proven that the sale transactions pertaining to purchases of medicines availed by qualified senior citizens formed part of petitioner's gross income.

We disagree.

The petitioner's reliance on the schedule of sales, 2002 annual ITR, audited financial statements, cash slips and testimony of Financial Manager Romeo David cannot be given weight by this Court because these documentary and testimonial evidence do not sufficiently establish whether the reported sales of P434,089,492.00 for the taxable year 2002 cover the 20% sales discount granted to qualified senior citizens.

In the Decision dated July 23, 2007, the Court in Division enumerated the following documentary evidence necessary in substantiating petitioner's claimed tax credit:

> Petitioner merely presented a Schedule of Sales (Net) for 2002, Schedule of Prepaid Tax-OSCA for 2002, and sample of its BIR and BFAD Special Record Books. <u>Petitioner should have submitted its detailed general ledger, cash receipts book, sales book or any other document that will establish that petitioner's reported sales of P434,089,492.00 for 2002</u>

included its gross sales (inclusive of the 20% sales discounts) to senior citizens.(Underscoring Ours for emphasis).[10]

This Court *en banc* upholds the verdict of the Division in finding petitioner's documentary and testimonial evidence, insufficient, and the allegation that the 20% senior citizen sales discount incorporated in the sales amounting to P434,089,492.00 for taxable year 2002, unmeritorious. Accordingly, the denial by the Division of petitioner's claimed tax credit is sustained.

WHEREFORE, premises considered, the petition is hereby **DISMISSED** for lack of merit. The assailed Decision dated July 23, 2007 and the Resolution dated October 3, 2007 are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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[10] Rollo, p. 19.

CAESAR A. CASANOVA
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