

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

TROPICAL HUT FOOD MARKET, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5771

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

MAR 06 2002

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DECISION

This case involves a claim for refund/tax credit in the amount of P863,037.00 allegedly representing overpaid income tax for taxable year 1996 due to the erroneous issuance of Revenue Regulations No. 2-94 treating the 20% sales discounts granted to qualified senior citizens under Republic Act No. 7432 as deductions from gross income instead of as tax credit.

The facts are as follows:

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with principal office address at No. 163 E. Delos Santos Avenue, Mandaluyong, City. It operates as a retailer of medicines and other pharmaceutical products and coffee shops that sell hamburgers, beverages and other food items under the name and style of "Tropical Hut" and as such, the drugstores and coffee shops are duly licensed to operate by the Bureau of Food and Drugs, the Department of Trade and Industry and the local government units where the drugstores are located (pars. 1-2, Joint Stipulation of Facts).

Petitioner alleged that during the year 1996, it granted 20% sales discounts in the total amount of P1,327,750.00 to qualified senior citizens on their purchases of medicines from Petitioner's drugstores and dine-in purchases of hamburgers, beverages and other food items from Petitioner's fast food stores in compliance with Section 4(a) of 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" which provides, thus:

"SECTION 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, 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*".

In its 1996 income tax return filed on April 15, 1997 (Exhibit E), Petitioner averred that it was forced to claim the 20% sales discounts to senior citizens of P1,327,750.00 as deduction from its gross income pursuant to the following provisions of Section 2(i) of Revenue Regulations No. 2-94, which implements Section 4(a) of R. A. No. 7432.

"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, restaurants, 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."

However, it is Petitioner's view that Section 2(i) of Revenue Regulations No. 2-94 is erroneous considering that Section 4(a) of R.A. No. 7432 clearly provides that "the cost

of the 20% sales discounts to senior citizens may be claimed as tax credit” and not as mere deductions from gross income.

Thus, in its administrative claim for refund filed on January 16, 1998 (CTA records, pp. 17-18), Petitioner computed its alleged income tax overpayment as follows:

Net Sales		P 1,730,709,294.00
Add: 20% Sales Discount to Senior Citizens		<u>1,327,750.00</u>
Gross Sales		P 1,732,037,044.00
Less: Cost of Sales		
Merchandise inventory, beginning	P 173,142,101.00	
Purchases	<u>1,394,772,821.00</u>	
Total merchandise available for sale	P1,567,914,922.00	
Less: Merchandise inventory, end	<u>181,299,558.00</u>	<u>1,386,615,364.00</u>
Gross Profit		P 345,421,680.00
Add: Miscellaneous Income		<u>80,363,189.00</u>
Total Income		P 425,784,869.00
Less: Operating Expenses		<u>387,275,209.00</u>
Net Income before Income Tax		P 38,509,660.00
Less: Income subjected to final tax		<u>1,236,033.00</u>
Net Taxable Income		<u>P 37,273,627.00</u>
Income Tax Due		P 13,045,770.00
Less: Tax Credit (Cost of 20% Sales Disc. to Senior Citizens)		<u>1,327,750.00</u>
Income Tax Still Payable		P 11,718,020.00
Less: Income Tax Actually Paid		<u>12,581,087.00</u>
Income Tax Refundable		<u>P (863,067.00)</u>

There being no action on the request for refund/tax credit on the part of the Respondent, Petitioner filed the instant Petition on April 7, 1999, well within the two-year prescriptive period provided under Section 230 [now 229] of the Tax Code.

Respondent, in his Answer, advanced by way of Special and Affirmative Defenses that:

- 1) In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action; and

- 2) Claims for tax refund are strictly construed against the taxpayer.
Petitioner has no cause of action.

In its memorandum, Petitioner asserted that Respondent's definition of the term "tax credit" in paragraph (i) of Revenue Regulations No. 2-94 is contrary to Section 4, paragraph (a) of Republic Act No. 7432; that the intent of Congress is to treat the sales discounts granted to senior citizens as tax credit instead of mere deductions from gross income and that Sec. 2 par. (i) of Revenue Regulations No. 2-94 is a mere implementing administrative regulation and cannot modify, alter or amend the clear mandate of Section 4 of Republic Act No. 7432 which it seeks to implement.

Respondent, on his part, argued that the provision under Republic Act No. 7432 which states that the 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 solemn duty of the government to collect taxes. Respondent further contended that the legal provision in question (Sec. 4 of RA 7432) employs the word "may" in the clause 'PROVIDED, that the establishments may claim the cost as tax credit' implying that the availability of the remedy of tax credit is not absolute and mandatory, it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if it so chooses neither does it impose a duty on the part of the government to sit back and allow an important facet of tax collection to be at the sole control and discretion of the taxpayer (citing BIR Ruling 0667-95 dated April 11, 1995). Lastly, Respondent maintained that the rules of Statutory Construction maintains that in cases of ambiguities, the principle that the contemporaneous construction of a statute given by executive officers of the government whose duty it is to execute it, is entitled to great respect and should ordinarily control the construction.

Accordingly, the issues We are tasked to resolve are as follows:

1. Whether or not the 20% sales discounts granted to qualified senior citizens on their purchases of medicines from the Petitioner should be treated as deductions from gross income pursuant to Revenue Regulations No. 2-94, or as tax credit deductible from the tax due pursuant to Republic Act No. 7432; and if the issue is resolved in favor of Petitioner,
2. Whether or not Petitioner has proven with sufficient evidence its claim for refund or tax credit.

We find for the Petitioner.

Anent the first issue, We have already ruled in several cases that the 20% sales discounts granted to qualified senior citizens should be treated as tax credit and not as mere deductions from gross income, said cases are hereinbelow enumerated,

1. *Mercury Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5612, promulgated January 9, 2001;*
2. *Mercury Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5315, promulgated September 6, 2000;*
3. *Trinity Franchising and Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5605, promulgated May 30, 2000;*
4. *M.E. Holding Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5604, promulgated April 25, 2000;*
5. *Vas Salus Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5509, promulgated November 26, 1999;*
6. *Trinity Franchising and Management Corporation vs. CIR, CTA Case No. 5313, promulgated August 18, 1998;*
7. *M.E. Holding Corporation vs. CIR, CTA Case No. 5314, promulgated August 17, 1998;*

8. *Baliuag Drug Corporation vs. CIR, CTA Case No. 5365, promulgated May 13, 1998;*
9. *Del Rosario Drug Corporation vs. CIR, CTA Case No. 5357, promulgated April 6, 1998;*
10. *Sto. Rosario Drug Corporation vs. CIR, CTA Case No. 5367, promulgated February 16, 1998.*

In the case of **Sto. Rosario Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5367, promulgated on February 16, 1998**, We elucidated, thus:

“The provision of Section 4 of R.A. 7432 is crystal clear – the 20% discounts granted to qualified senior citizens may be claimed as tax credit. And as a settled rule of statutory construction, when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says (*Marin vs. Nacianceno, 19 Phil. 238*). Construction and interpretation come only after it has been demonstrated that the application is impossible or inadequate without them (*People vs. Mapa, G.R. No. L-22301, August 30, 1967*).

It is true that the respondent has the power of subordinate legislation effected by her issuance of implementing rules and regulations such as Revenue Regulations No. 2-94 in the case at bar, but the said power, is not without limit. The administrative regulation must not be in sharp conflict with the governing statute it seeks to implement (*Nestle Philippines, Inc. vs. Court of Appeals, et al, 203 SCRA 504*). Revenue Regulations No. 2-94 gave a new meaning to the phrase “tax credit”, interpreting it to mean that the 20% discount granted to qualified senior citizens is an amount deductible from the establishment’s gross sales, which is completely contradictory to the literal or widely accepted meaning of the said phrase, as an amount subtracted from an individual’s or entity’s tax liability to arrive at the total tax liability (*Black Law’s Dictionary*).

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In view of such apparent discrepancy in the interpretation of the term “tax credit” the provisions of the law under R.A. 7432 should prevail over the subordinate regulation issued by respondent under Revenue Regulations No. 2-94.”

Further, as correctly pointed out by Petitioner in its memorandum (CTA records, pp. 486-487), the deliberations of the Bicameral Conference Committee Meeting on Social Justice held on February 5, 1992 which finalized the contents of Republic Act No. 7432 clearly show that the real intent of the lawmakers was to treat the sales discounts to senior citizens as tax credit rather than as deductions from gross income, thus:

“THE CHAIRMAN, (Rep. Unico). By the way, before that ano, about deductions from taxable income. I think we incorporated there a provision na – on the responsibility of the private hospitals and drugstores, hindi ba?

SEN. ANGARA. O, o.

THE CHAIRMAN (Rep. Unico), So, I think we have to put in also a provision here about the deductions from taxable income of that private hospitals, di ba ganon ‘yan?

REP. AQUINO. Section 11 sa atin ano?

THE CHAIRMAN, (Rep. Unico).

Puwede na. Yung about the private hospitals. Yung isiningit natin?

MS. ADVENTO. Singit na po ba ‘yung 15% on credit . . . (inaudible/did not use microphone).

SEN. ANGARA. Hindi pa, hindi pa.

THE CHAIRMAN, (Rep. Unico) Ah, ‘di pa ba naisama natin?

SEN. ANGARA. O, o. You want to insert that?

THE CHAIRMAN (Rep. Unico). Yung ang proposal ni Senator Shahani, e.

SEN. ANGARA. . . . in the case of private hospitals . . . they got the grant of 15% discount, provided that, the private hospitals can claim the expense as a tax credit.

REP. AQUINO. Yah . . . could be allowed as deductions in the perpetrations of . . . (inaudible) income . . .

SEN. ANGARA. I-tax credit na lang natin para walang cash-out ano?

REP. AQUINO O, o, tax credit, Tama, Okay. Hospitals ba o lahat ng establishments na covered?

THE CHAIRMAN. (Rep. Unico) Sa kuwan lang ‘yon, as private hospitals lang.

REP. AQUINO. Ano ba ‘yung establishments na covered?

SEN. ANGARA. Restaurant. . lodging houses, recreation centers.

REP. AQUINO. All establishments covered siguro?

SEN. ANGARA. From all establishments. Alisin na natin ‘yung kuwan kung ganon. Can we go back to Section 4 ha?

REP. AQUINO. Oho.

SEN. ANGARA. Letter A. To capture that thought, we’ll say the grant of 20% discount from all establishments et. cetera, et cetera, provided that said establishments – provided that private establishments may claim the cost as a tax credit. Ganon ba ‘yon?

REP. AQUINO. Yah.

SEN. ANGARA. Dahil kung government, they don’t need to claim it.

THE CHAIRMAN. (Rep. Unico). Tax Credit.

SEN. ANGARA. As a tax credit rather than as kuwan – deduction, Okay.

REP. AQUINO. Okay.

SEN. ANGARA. Sige, Okay. Di, subject to style na lang sa letter A.”
(pp. 22-24 underscoring supplied)

The Court of Appeals affirmed Our said ruling in the cases of **Commissioner of Internal Revenue vs. Elmas Drug Corporation**, CA-G.R. SP No. 49946, promulgated October 19, 1999, and **Trinity Franchising and Management Corporation vs. Commissioner of Internal Revenue** CA-G.R. SP NO. 60269, promulgated April 4, 2001. In the most recent case of **Central Luzon Drug Corporation vs. Commissioner of Internal Revenue**, CA-G.R. SP No. 60057, dated May 31, 2001, the said Court ruled

that the full amount and not only the cost of the 20% sales discounts to senior citizens should be the basis of the tax credit, to wit:

“Lastly, the concept of tax credit as just compensation, leads us to conclude that the term “cost” under Sec. 4(a) of R.A. 7432 refers to cost of acquisition, not the cost of medicines sold to senior citizens, which was already reduced by 20%. Just compensation is the full and fair equivalent of the property taken from the private owner by the expropriator. It is intended to fully indemnify the owner for the loss sustained. The actual, basis or market value of the property is the standard of just compensation. Among the factors considered are the cost of acquisition of the property, the current value of like properties and its actual or potential uses. Clearly, the cost of medicines sold to senior citizens, which is already discounted does not come close to the full and fair equivalent of the property taken. It should not be the basis of the tax credit.”

Therefore, what is now left for Us to determine is whether or not Petitioner was able to sufficiently prove the factual aspect of its claim for refund.

The auditing firm, Vicente E. Reyes & Associates, through its Partner, Mr. Amby Reyes, was commissioned by this Court pursuant to CTA-Circular 1-95 as amended, to verify Petitioner’s claim. In its report dated August 10, 2000 (Exhibit K), Vicente E. Reyes & Associates certified that out of the claimed 20% sales discounts to senior citizens of P1,327,750.00 for 1996, only the amount of P979,663.16 was properly supported by cash slips broken down as follows:

Supermarket Division	P 776,365.69
Coffeeshop Division	<u>203,297.47</u>
Total:	<u>P 979,663.16</u>

This Court finds the said report in order upon an examination of the “Summary of Sales and Discounts to Senior Citizens for the year 1996” (Exhibit M) and Petitioner’s cash slips (Pre-marked as Exhibit L, including sub-markings). However, since the substantiated amount of P979,663.16 is inclusive of VAT, it is but proper to exclude the

10% VAT or the amount of P89,060.29. Accordingly, only the amount of P890,602.87 shall become Petitioner's allowable tax credit.

Records likewise reveal that Petitioner actually deducted from its 1996 gross sales the amount of P1,327,750.00 representing 20% sales discounts to senior citizens resulting to a 1996 net sales of P1,730,709,294.00. The latter amount is indicated in Petitioner's audited financial statements as "S a l e s, net" (Exhibit D-2) and in Section C, Schedule 1 of its 1996 income tax return as "Gross Sales During The Year" (Exhibit E-3). As a result of said deduction, Petitioner paid an income tax due of P12,581,057.00 (Exhibit E-6) on taxable income of P35,945,877.00.

In computing Petitioner's 1996 overpaid income tax, it becomes necessary to add back to Petitioner's net sales of P1,730,709,294.00 the amount of P1,327,750.00 previously deducted from its gross sales. The reason being that the 20% sales discounts to senior citizens is no longer to be treated as deductions from gross income but rather as tax credit.

Consequently, a re-computation of Petitioner's 1996 income tax liability using the figure of P890,602.87 or P890,603.00 as allowable tax credit will result to an overpaid income tax of P425,890.00, as follows:

Net Sales		P 1,730,709,294.00
Add: 20% Sales Discount to Senior Citizens		<u>1,327,750.00</u>
Gross Sales		P 1,732,037,044.00
Less: Cost of Sales		
Merchandise inventory, beginning	P 173,142,101.00	
Purchases	<u>1,394,772,821.00</u>	
Total merchandise available for sale	P 1,567,914,922.00	
Less: Merchandise inventory, end	<u>181,299,558.00</u>	<u>1,386,615,364.00</u>
Gross Profit		P 345,421,680.00
Add: Miscellaneous Income		<u>80,363,189.00</u>

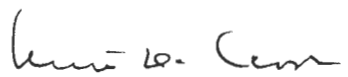
Total Income		P	425,784,869.00
Less: Operating Expenses			<u>387,275,209.00</u>
Net Income before Income Tax		P	38,509,660.00
Less: Income subjected to final tax			<u>1,236,033.00</u>
Net Taxable Income		P	<u>37,273,627.00</u>
Income Tax Due		P	13,045,770.00
Less: 1.) Tax Credit – 20% sales discounts			
to senior citizens w/ proper cash slips	P	890,603.00	
2.) Income Tax Payment		<u>12,581,057.00</u>	<u>13,471,660.00</u>
Income Tax Refundable		P	<u>(425,890.00)</u>

WHEREFORE, in view of all the foregoing, Petitioner's claim for tax credit is hereby **GRANTED** but in a reduced amount of P425,890.00. Respondent Commissioner of Internal Revenue is **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of herein Petitioner in the amount of **FOUR HUNDRED TWENTY FIVE THOUSAND EIGHT HUNDRED NINETY PESOS** (P425,890.00) representing overpaid income tax for the taxable year 1996.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Judge

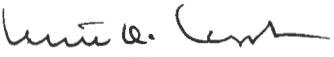
WE CONCUR:


ERNESTO D. ACOSTA
Presiding Judge

(with Concurring & Dissenting Opinion)
AMANCIO Q. SAGA
Associate Judge

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 Judge