

SECOND DIVISION

[G.R. No. 160193, March 03, 2008]

M.E. HOLDING CORPORATION, Petitioner, vs. THE HON. COURT OF APPEALS, COURT OF TAX APPEALS, and THE COMMISSIONER OF INTERNAL REVENUE, Respondents.

DECISION

VELASCO JR., J.:

This case involves Republic Act No. (RA) 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*, passed on April 23, 1992. It granted, among others, a 20% sales discount on purchases of medicines by qualified senior citizens.

On April 15, 1996, petitioner M.E. Holding Corporation (M.E.) filed its 1995 Corporate Annual Income Tax Return, claiming the 20% sales discount it granted to qualified senior citizens. M.E. treated the discount as deductions from its gross income purportedly in accordance with Revenue Regulation No. (RR) 2-94, Section 2(i) of the Bureau of Internal Revenue (BIR) issued on August 23, 1993. Sec. 2(i) states:

Section 2. DEFINITIONS. – For purposes of these regulations:

x x x x

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 income for income tax purposes** and from their gross sales for value-added tax or other percentage tax purposes. (Emphasis supplied.)

The deductions M.E. claimed amounted to PhP 603,424. However, it filed the return under protest, arguing that the discount to senior citizens should be treated as tax credit under Sec. 4(a) of RA 7432, and not as mere deductions from M.E.'s gross income as provided under RR 2-94.

Sec. 4(a) of RA 7432 states:

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 the 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**; (Emphasis supplied.)

Subsequently, on December 27, 1996, M.E. sent BIR a letter-claim dated December 6, 1996,^[1] stating that it overpaid its income tax owing to the BIR's erroneous interpretation of Sec. 4(a) of RA 7432.

Due to the inaction of the BIR, and to toll the running of the two-year prescriptive period in filing a claim for refund, M.E. filed an appeal before the Court of Tax Appeals (CTA), reiterating its position that the sales discount should be treated as tax credit, and that RR 2-94, particularly Section 2(i), was without effect for being inconsistent with RA 7432.

On April 25, 2000, the CTA rendered a Decision^[2] in favor of M.E., the fallo of which reads:

WHEREFORE, in view of the foregoing, petitioner's claim for refund is hereby partially GRANTED. Respondent is hereby ORDERED to REFUND in favor of petitioner the amount of P122,195.74, representing overpaid income tax [for] the year 1995.

SO ORDERED.

The CTA ruled that the 20% sales discount granted to qualified senior citizens should be treated as tax credit and not as item deduction from the gross income or sales, pointing out that Sec. 4(a) of RA 7432 was unequivocal on this point. The CTA held that Sec. 2(i) of RR 2-94 contravenes the clear proviso of RA 7432 prescribing that the 20% sales discount should be claimed as tax credit. Further, it ruled that RA 7432 is a law that necessarily prevails over an administrative issuance such as RR 2-94.

Unfortunately, what appears to be the victory of M.E. before the CTA was watered down by the tax court's declaration that, while the independent auditor M.E. hired found the amount PhP 603,923.46 as having been granted as sales discount to qualified senior citizens, M.E. failed to properly support the claimed discount with corresponding cash slips. Thus, the CTA reduced M.E.'s claim for PhP 603,923.46 sales discount to PhP 362,574.57 after the CTA disallowed PhP 241,348.89 unsupported claims, and consequently lowered the refundable amount to PhP 122,195.74.

On May 24, 2000, M.E. filed a Motion for Reconsideration, therein attributing its failure to submit and offer certain documents, specifically the cash slips, to the inadvertence of its independent auditor who failed to transmit the documents to M.E.'s counsel. It also argued that the tax credit should be based on the actual discount and not on the acquisition cost of the medicines.

On July 11, 2000, the CTA denied M.E.'s motion for reconsideration which contained a prayer to present additional evidence consisting of duplicate copies of the cash slips allegedly not submitted to M.E. by its independent auditor.^[3] In refuting M.E.'s contention that the tax credit should be based on the actual discount and not on the acquisition cost of the medicines, the CTA applied the Court of Appeals (CA) ruling in *CIR v. Elmas Drug Corporation*,^[4] where the term "cost of the discount" was interpreted to mean only the direct acquisition cost, excluding administrative and other incremental costs.

Aggrieved, M.E. went to the CA on a petition for review docketed as CA-G.R. SP No. 60134. On July 1, 2003, the CA rendered its Decision,^[5] dismissing the petition.

Even as it laid the entire blame on M.E. for its failure to present its additional evidence, the CA pointed out that forgotten evidence is not newly discovered evidence which can be presented to the appellate tax court, even after it had already rendered its decision. Likewise, the CA interpreted, as did the CTA, the term "cost" to mean only the direct acquisition cost, adding that to interpret the word "cost" to include "all administrative and incremental costs to sales to senior citizens" would open the floodgates for drugstores to pad the costs of the sales with such broad, undefined, and varied administrative and incremental costs such that the government would ultimately bear the escalated costs of the sales. And citing *Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd.*, the CA held that claims for refund, being in the nature of a claim for exemption, should be construed in *strictissimi juris* against the taxpayer.^[6]

The CA denied petitioner's Motion for Reconsideration on September 24, 2003.^[7]

Hence, the instant petition for review, anchored essentially on the same issues raised before the CA, as follows:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND HAS DEVIATED FROM APPLICABLE LAWS AND JURISPRUDENCE IN NOT APPRECIATING OTHER COMPETENT EVIDENCE PROVING THE AMOUNT OF DISCOUNTS GRANTED TO SENIOR CITIZENS AND MERELY RELYING SOLELY ON THE CASH SLIPS.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN AFFIRMING THE COURT OF TAX APPEALS' DENIAL OF PETITIONER'S MOTION TO ORDER AND SUBMIT AS DOCUMENTARY [EVIDENCE] THE CASH SLIPS WHICH THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT INADVERTENTLY DID NOT TURN OVER TO THE PETITIONER'S COUNSEL.

III.

WHETHER OR NOT THE TERM "COST" UNDER PARAGRAPH (A) SECTION 4 OF REPUBLIC ACT 7432 IS EQUIVALENT ONLY TO ACQUISITION COST.^[8]

Our Ruling

The petition is partly meritorious.

The 20% sales discount to senior citizens may be claimed by an establishment owner as tax credit. RA 7432, the applicable law, is unequivocal on this. The implementing RR 2-94 that considers such discount as mere deductions to the taxpayer's gross income or gross sales clearly clashes with the clear language of RA 7432, the law sought to be implemented. We need not delve on the nullity of the implementing rule all over again as we have already put this issue at rest in a string of cases.^[9]

Now, we will discuss the remaining issues *in seriatim*.

On the first issue, M.E. faults the CA for merely relying on the cash slips as basis for determining the total 20% sales discount given to senior citizens. To M.E., there are other competent pieces of evidence available to prove the same point, such as the Special Record Book required by the Bureau of Food and Drugs^[10] and the Special Record Book required under RR 2-94. According to M.E., these special record books containing, as it were, the same information embodied in the cash slips were submitted to the CTA during M.E.'s formal offer of evidence. Moreover, M.E. avers that the CA ought to have considered the special record books since their authenticity and the veracity of their contents were corroborated by the store supervisor, Amelita Gonzales, and Rene Amby Reyes, its independent auditor.

M.E. fails to persuade. The determination of the exact amount M.E. claims as the 20% sales discount it granted to the senior citizens calls for an evaluation of factual matters. The unyielding rule is that the findings of fact of the trial court, particularly when affirmed by the CA, are binding upon this Court,^[11] save when the lower courts had overlooked,

misunderstood, or misinterpreted certain facts or circumstances of weight, which, if properly considered, would affect the result of the case and warrant a reversal of the decision. The instant case does not fall under the exception; hence, we do not find any justification to review all over again the evidence presented before the CTA, and the factual conclusions deduced therefrom.

Lest it be overlooked, the Rules of Court is of suppletory application in quasi-judicial proceedings. Be this as it may, the CTA was correct in disallowing and not considering the belatedly-submitted cash slips to be part of the 20% sales discount for M.E.'s taxable year 1995. This is as it should be in the light of Sec. 34 of Rule 132 prescribing that no evidence shall be considered unless formally offered with a statement of the purpose why it is being offered. In addition, the rule is that the best evidence under the circumstance must be adduced to prove the allegations in a complaint, petition, or protest. Only when the best evidence cannot be submitted may secondary evidence be considered. But, in the instant case, the disallowed cash slips, the best evidence at that time, were not part of M.E.'s offer of evidence. While it may be true that the authenticated special record books yield the same data found in the cash slips, they cannot plausibly be considered by the courts a quo and made to corroborate pieces of evidence that have, in the first place, been disallowed. Recall also that M.E. offered the disallowed cash slips as evidence only after the CTA had rendered its assailed decision. Thus, we cannot accept the excuse of inadvertence of the independent auditor as excusable negligence. As aptly put by the CA, the belatedly-submitted cash slips do not constitute newly- found evidence that may be submitted as basis for a new trial or reconsideration of the decision.

We reiterate at this juncture that claims for tax refund/credit, as in the instant case, are in the nature of claims for exemption. Accordingly, the law relied upon is not only construed in *strictissimi juris* against the taxpayer, but also the proofs presented entitling a taxpayer to an exemption are *strictissimi* scrutinized.

On the second issue, M.E. strongly asserts that the CA gravely abused its discretion in denying M.E. the opportunity to submit the disallowed cash slips despite the independent auditor's admission, via an Affidavit,^[12] of guilt for inadvertence. M.E.'s counsel explains that he relied on the independent auditor's representation that all the cash slips were turned over. Besides, M.E. asserts that the independent auditor, being an officer of the court, having been commissioned by the CTA, is presumed to have done his duty in a regular manner, and, therefore, his negligence should not be taken against M.E.

We do not agree with M.E. Grave abuse of discretion connotes capricious, whimsical, arbitrary, or despotic exercise of jurisdiction. The CA surely cannot be guilty of gravely abusing its discretion when it refused to consider, in lieu of the unsubmitted additional cash slips, the special record books which are only secondary evidence. The cash slips were the best evidence. Also, the CA noted that the belatedly-offered cash slips were presented only after the CTA had rendered its decision. All these factors argue against the notion that the CA had, in sustaining the CTA, whimsically and capriciously exercised its discretion.

On the third and last issue, M.E. contends that it is entitled, as a matter of law, to claim as tax credit the full amount of the sales discount granted to senior citizens.

M.E.’s contention is correct. In *Bicolandia Drug Corporation (formerly Elmas Drug Corporation) v. Commissioner of Internal Revenue*, we interpreted the term “cost” found in Sec. 4(a) of RA 7432 as referring to the amount of the 20% discount extended by a private establishment to senior citizens in their purchase of medicines.^[13] There we categorically said that it is the Government that should fully shoulder the cost of the sales discount granted to senior citizens. Thus, we reversed and set aside the CA’s Decision in CA-G.R. SP No. 49946, which construed the same word “cost” to mean the theoretical acquisition cost of the medicines purchased by qualified senior citizens. Accordingly, M.E. is entitled to a tax credit equivalent to the actual 20% sales discount it granted to qualified senior citizens.

With the disallowance of PhP 241,348.89 for being unsupported, and the net amount of PhP 362,574.57 for the actual 20% sales discount granted to qualified senior citizens properly allowed by the CTA and fully appreciated as tax credit, the amount due as tax credit in favor of M.E. is PhP 151,201.71, computed as follows:

Net Sales		PhP	
			94,724,284.00
Add: 20% Discount to Senior Citizens			<u>603,923.46</u>
	(Per		
	Petitioner’s Summary)		
Gross Sales		PhP	
			95,328,207.46
Less: Cost of Sales			
Merchandise Inventory, beg.	PhP		
			9,519,210.00
Add Purchases			<u>87,288,988.00</u>
Total Goods available for Sale	PhP		
			96,808,198.00
Less: Merchandise Inventory, End	PhP	PhP	
			<u>9,469,349.00</u> <u>87,338,849.00</u>
Gross Income		PhP	7,989,358.46
Less: Operating Expenses			<u>17,006,032.00</u>
Net Operating Income/(Loss)		(PhP	
			9,016,673.54)
Add: Miscellaneous Income			<u>43,489,663.00</u>

Net Income	PhP
	34,472,989.46
Less: Interest Income Subject to Final Tax	<u>22,242,227.00</u>
Net Taxable Income	<u>PhP</u>
	<u>12,230,762.46</u>
Tax Due (PhP 12,230,762.46 x 35%)	PhP 4,280,766.86
Less: 1) Tax Credit (20% Discount with supporting documents)	PhP 362,574.57
2) Income Tax Payment for the Year	<u>4,069,394.00</u>
Total	<u>PhP 4,431,968.57</u>
AMOUNT OF TAX CREDIT	<u>PhP 151,201.71</u>

Parenthetically, we note that M.E. originally prayed for a tax refund for its tax overpayment for CY 1995. The CTA and the CA granted the desired refund, albeit at a lower amount due to their interpretation, erroneous as it turned out to be, of the term “cost.” However, we cannot agree with the courts *a quo* on what M.E. is entitled to. RA 7432 expressly provides that the sales discount may be claimed as tax credit, not as tax refund.

It ought to be noted, however, that on February 26, 2004, RA 9257, or The *Expanded Senior Citizens Act of 2003*, amending RA 7432, was signed into law, ushering in, upon its effectivity on March 21, 2004, a new tax treatment for sales discount purchases of qualified senior citizens of medicines. Sec. 4(a) of RA 9257 provides:

SEC. 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 the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, x x x;

x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as **tax deduction** based on the net cost of the goods sold or services rendered: Provided, That the cost of the discount shall be allowed as deduction from gross

income for the same taxable year that the discount is granted. *Provided, further,* That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis supplied.)

Conformably, starting taxable year 2004, the 20% sales discount granted by establishments to qualified senior citizens is to be treated as tax deduction, no longer as tax credit.^[14]

IN VIEW OF THE FOREGOING, this petition is **PARTLY GRANTED**. The CA's Decision dated July 1, 2003 and its Resolution of September 24, 2003 in CA-G.R. SP No. 60134, affirming the Decision of the CTA dated April 25, 2000 in CTA Case No. 5604, are **AFFIRMED** with **MODIFICATIONS** insofar as the amount and mode of payment of M.E.'s claim are concerned. As modified, the *fallo* of the April 25, 2000 Decision of the CTA shall read:

WHEREFORE, in view of the foregoing, petitioner M.E.'s claim for refund is hereby **PARTIALLY GRANTED** in the form of a tax credit. **Respondent Commissioner of Internal Revenue is ORDERED to issue a tax credit certificate in favor of M.E. in the amount of PhP 151,201.71.**

No pronouncement as to costs.

SO ORDERED.

*Carpio, (Acting Chairperson) , Carpio Morales, Azcuna,** Tinga, and Velasco, Jr., JJ., concur.*

Quisumbing, J., on official leave.

** Additional member as per Special Order No. 485 dated February 14, 2008.

[1] *Rollo*, pp. 137-139.

[2] *Id.* at 39-51. Penned by Presiding Judge Ernesto D. Acosta and concurred in by Associate Judge Ramon O. de Veyra. Associate Judge Amancio Q. Saga dissented.

[3] *Id.* at 72-74.

[4] CA-G.R. SP No. 49946, October 19, 1999.

[5] *Rollo*, pp. 165-173. Penned by Presiding Justice Cancio C. Garcia (Chairperson, a retired member of this Court) and concurred in by Associate Justices Eliezer R. Delos

Santos and Mariano C. Del Castillo.

[6] 314 Phil. 220, 228 (1995).

[7] *Rollo*, p. 187.

[8] *Id.* at 10-11.

[9] *Commissioner of Internal Revenue v. Bicolandia Drug Corporation*, G.R. No. 148083, July 21, 2006, 496 SCRA 176; *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 148512, June 26, 2006, 492 SCRA 575; *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005, 456 SCRA 414.

[10] Under BFAD Memo Circular No. 4, Series of 1994.

[11] *Xentrex Automotive, Inc. v. Court of Appeals*, G.R. No. 121559, June 18, 1998, 291 SCRA 66, 71; citations omitted.

[12] *Rollo*, pp. 162-163.

[13] G.R. No. 142299, June 22, 2006, 492 SCRA 159, 168.

[14] *Carlos Superdrug Corp. v. Department of Social Welfare and Development (DSWD)*, G.R. No. 166494, June 29, 2007, 526 SCRA 130.