



Republic of the Philippines
Supreme Court
Manila

EN BANC

MANILA MEMORIAL PARK, INC.
AND LA FUNERARIA PAZ-SUCAT,
INC.,

Petitioners,

G.R. No. 175356

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, *and*
LEONEN, JJ.

- versus -

SECRETARY OF THE
DEPARTMENT OF SOCIAL
WELFARE AND DEVELOPMENT
and THE SECRETARY OF THE
DEPARTMENT OF FINANCE,

Respondents.

Promulgated:

DECEMBER 03, 2013

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DECISION

DEL CASTILLO, J.:

When a party challenges the constitutionality of a law, the burden of proof rests upon him.¹

Before us is a Petition for Prohibition² under Rule 65 of the Rules of Court filed by petitioners Manila Memorial Park, Inc. and La Funeraria Paz-Sucacat, Inc.,

¹ *Cordillera Broad Coalition v. Commission on Audit*, 260 Phil. 528, 535 (1990).

² *Rollo*, pp. 3-36.

domestic corporations engaged in the business of providing funeral and burial services, against public respondents Secretaries of the Department of Social Welfare and Development (DSWD) and the Department of Finance (DOF).

Petitioners assail the constitutionality of Section 4 of Republic Act (RA) No. 7432,³ as amended by RA 9257,⁴ and the implementing rules and regulations issued by the DSWD and DOF insofar as these allow business establishments to claim the 20% discount given to senior citizens as a tax deduction.

Factual Antecedents

On April 23, 1992, RA 7432 was passed into law, granting senior citizens the following privileges:

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 establishment[s], restaurants and recreation centers and purchase of medicine anywhere in the country: Provided, That private establishments may claim the cost as tax credit;

b) a minimum of twenty percent (20%) discount on admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals and other similar places of culture, leisure, and amusement;

c) exemption from the payment of individual income taxes: Provided, That their annual taxable income does not exceed the property level as determined by the National Economic and Development Authority (NEDA) for that year;

d) exemption from training fees for socioeconomic programs undertaken by the OSCA as part of its work;

e) free medical and dental services in government establishment[s] anywhere in the country, subject to guidelines to be issued by the Department of Health, the Government Service Insurance System and the Social Security System;

f) to the extent practicable and feasible, the continuance of the same benefits and privileges given by the Government Service Insurance System

³ AN ACT TO MAXIMIZE THE CONTRIBUTION OF SENIOR CITIZENS TO NATION BUILDING, GRANT BENEFITS AND SPECIAL PRIVILEGES AND FOR OTHER PURPOSES, otherwise known as the Senior Citizens Act. Approved April 23, 1992.

⁴ AN ACT GRANTING ADDITIONAL BENEFITS AND PRIVILEGES TO SENIOR CITIZENS AMENDING FOR THE PURPOSE 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,” otherwise known as the Expanded Senior Citizens Act of 2003. Approved February 26, 2004.

(GSIS), Social Security System (SSS) and PAG-IBIG, as the case may be, as are enjoyed by those in actual service.

On August 23, 1993, Revenue Regulations (RR) No. 02-94 was issued to implement RA 7432. Sections 2(i) and 4 of RR No. 02-94 provide:

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

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.

x x x x

Sec. 4. RECORDING/BOOKKEEPING REQUIREMENTS FOR PRIVATE ESTABLISHMENTS. – Private establishments, i.e., transport services, hotels and similar lodging establishments, restaurants, recreation centers, drugstores, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture[,] leisure and amusement, giving 20% discounts to qualified senior citizens are required to keep separate and accurate record[s] of sales made to senior citizens, which shall include the name, identification number, gross sales/receipts, discounts, dates of transactions and invoice number for every transaction.

The amount of 20% discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of the VAT and other percentage taxes.

In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,⁵ the Court declared Sections 2(i) and 4 of RR No. 02-94 as erroneous because these contravene RA 7432,⁶ thus:

RA 7432 specifically allows private establishments to claim as tax credit the amount of discounts they grant. In turn, the Implementing Rules and Regulations, issued pursuant thereto, provide the procedures for its availment. To deny such credit, despite the plain mandate of the law and the regulations carrying out that mandate, is indefensible.

First, the definition given by petitioner is erroneous. It refers to tax credit as the amount representing the 20 percent discount that “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.” In

⁵ 496 Phil 307 (2005).

⁶ Id. at 325-326 and 332-333.

ordinary business language, the tax credit represents the amount of such discount. However, the manner by which the discount shall be credited against taxes has not been clarified by the revenue regulations.

By ordinary acceptance, a discount is an “abatement or reduction made from the gross amount or value of anything.” To be more precise, it is in business parlance “a deduction or lowering of an amount of money;” or “a reduction from the full amount or value of something, especially a price.” In business there are many kinds of discount, the most common of which is that affecting the income statement or financial report upon which the income tax is based.

x x x x

Sections 2.i and 4 of Revenue Regulations No. (RR) 2-94 define tax credit as the 20 percent discount deductible from gross income for income tax purposes, or from gross sales for VAT or other percentage tax purposes. In effect, the tax credit benefit under RA 7432 is related to a sales discount. This contrived definition is improper, considering that the latter has to be deducted from gross sales in order to compute the gross income in the income statement and cannot be deducted again, even for purposes of computing the income tax.

When the law says that the cost of the discount may be claimed as a tax credit, it means that the amount — when claimed — shall be treated as a reduction from any tax liability, plain and simple. The option to avail of the tax credit benefit depends upon the existence of a tax liability, but to limit the benefit to a sales discount — which is not even identical to the discount privilege that is granted by law — does not define it at all and serves no useful purpose. The definition must, therefore, be stricken down.

*Laws Not Amended
by Regulations*

Second, the law cannot be amended by a mere regulation. In fact, a regulation that “operates to create a rule out of harmony with the statute is a mere nullity;” it cannot prevail.

It is a cardinal rule that courts “will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it x x x.” In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that “Congress may not have the opportunity or competence to provide.” The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities’ interpretations when clearly absurd, erroneous or improper.

In the present case, the tax authorities have given the term tax credit in Sections 2.i and 4 of RR 2-94 a meaning utterly in contrast to what RA 7432 provides. Their interpretation has muddled x x x the intent of Congress in granting a mere discount privilege, not a sales discount. The administrative agency issuing these regulations may not enlarge, alter or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature.

In case of conflict, the law must prevail. A “regulation adopted pursuant to law is law.” Conversely, a regulation or any portion thereof not adopted pursuant to law is no law and has neither the force nor the effect of law.⁷

On February 26, 2004, RA 9257⁸ amended certain provisions of RA 7432, to wit:

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 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, including funeral and burial services for the death of senior citizens;

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.

To implement the tax provisions of RA 9257, the Secretary of Finance issued RR No. 4-2006, the pertinent provision of which provides:

SEC. 8. AVAILMENT BY ESTABLISHMENTS OF SALES DISCOUNTS AS DEDUCTION FROM GROSS INCOME. – Establishments enumerated in subparagraph (6) hereunder granting sales discounts to senior citizens on the sale of goods and/or services specified thereunder are entitled to deduct the said discount from gross income subject to the following conditions:

- (1) Only that portion of the gross sales EXCLUSIVELY USED, CONSUMED OR ENJOYED BY THE SENIOR CITIZEN shall be eligible for the deductible sales discount.
- (2) The gross selling price and the sales discount MUST BE SEPARATELY INDICATED IN THE OFFICIAL RECEIPT OR SALES INVOICE issued by the

⁷ Id. at 325-333.

⁸ Amended by Republic Act No. 9994 (February 15, 2010), AN ACT GRANTING ADDITIONAL BENEFITS AND PRIVILEGES TO SENIOR CITIZENS, FURTHER AMENDING REPUBLIC ACT NO. 7432, AS AMENDED, OTHERWISE KNOWN AS “AN ACT TO MAXIMIZE THE CONTRIBUTION OF SENIOR CITIZENS TO NATION BUILDING, GRANT BENEFITS AND SPECIAL PRIVILEGES AND FOR OTHER PURPOSES.”

establishment for the sale of goods or services to the senior citizen.

- (3) Only the actual amount of the discount granted or a sales discount not exceeding 20% of the gross selling price can be deducted from the gross income, net of value added tax, if applicable, for income tax purposes, and from gross sales or gross receipts of the business enterprise concerned, for VAT or other percentage tax purposes.
- (4) The discount can only be allowed as deduction from gross income for the same taxable year that the discount is granted.
- (5) The business establishment giving sales discounts to qualified senior citizens is required to keep separate and accurate record[s] of sales, which shall include the name of the senior citizen, TIN, OSCA ID, gross sales/receipts, sales discount granted, [date] of [transaction] and invoice number for every sale transaction to senior citizen.
- (6) Only the following business establishments which granted sales discount to senior citizens on their sale of goods and/or services may claim the said discount granted as deduction from gross income, namely:

x x x x

- (i) Funeral parlors and similar establishments – The beneficiary or any person who shall shoulder the funeral and burial expenses of the deceased senior citizen shall claim the discount, such as casket, embalmment, cremation cost and other related services for the senior citizen upon payment and presentation of [his] death certificate.

The DSWD likewise issued its own Rules and Regulations Implementing RA 9257, to wit:

RULE VI DISCOUNTS AS TAX DEDUCTION OF ESTABLISHMENTS

Article 8. Tax Deduction of Establishments. – The establishment may claim the discounts granted under Rule V, Section 4 – Discounts for Establishments, Section 9, Medical and Dental Services in Private Facilities and Sections 10 and 11 – Air, Sea and Land Transportation 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; *Provided, finally*, that the implementation of the tax deduction shall be

subject to the Revenue Regulations to be issued by the Bureau of Internal Revenue (BIR) and approved by the Department of Finance (DOF).

Feeling aggrieved by the tax deduction scheme, petitioners filed the present recourse, praying that Section 4 of RA 7432, as amended by RA 9257, and the implementing rules and regulations issued by the DSWD and the DOF be declared unconstitutional insofar as these allow business establishments to claim the 20% discount given to senior citizens as a tax deduction; that the DSWD and the DOF be prohibited from enforcing the same; and that the tax credit treatment of the 20% discount under the former Section 4 (a) of RA 7432 be reinstated.

Issues

Petitioners raise the following issues:

A.

WHETHER THE PETITION PRESENTS AN ACTUAL CASE OR CONTROVERSY.

B.

WHETHER SECTION 4 OF REPUBLIC ACT NO. 9257 AND X X X ITS IMPLEMENTING RULES AND REGULATIONS, INsofar AS THEY PROVIDE THAT THE TWENTY PERCENT (20%) DISCOUNT TO SENIOR CITIZENS MAY BE CLAIMED AS A TAX DEDUCTION BY THE PRIVATE ESTABLISHMENTS, ARE INVALID AND UNCONSTITUTIONAL.⁹

Petitioners' Arguments

Petitioners emphasize that they are not questioning the 20% discount granted to senior citizens but are only assailing the constitutionality of the tax deduction scheme prescribed under RA 9257 and the implementing rules and regulations issued by the DSWD and the DOF.¹⁰

Petitioners posit that the tax deduction scheme contravenes Article III, Section 9 of the Constitution, which provides that: “[p]rivate property shall not be taken for public use without just compensation.”¹¹ In support of their position, petitioners cite *Central Luzon Drug Corporation*,¹² where it was ruled that the 20% discount privilege constitutes taking of private property for public use which requires the payment of just compensation,¹³ and *Carlos Superdrug Corporation*

⁹ *Rollo*, p. 392.

¹⁰ *Id.* at 383.

¹¹ *Id.* at 401-420.

¹² *Supra* note 5.

¹³ *Rollo*, pp. 402-403.

v. Department of Social Welfare and Development,¹⁴ where it was acknowledged that the tax deduction scheme does not meet the definition of just compensation.¹⁵

Petitioners likewise seek a reversal of the ruling in *Carlos Superdrug Corporation*¹⁶ that the tax deduction scheme adopted by the government is justified by police power.¹⁷ They assert that “[a]lthough both police power and the power of eminent domain have the general welfare for their object, there are still traditional distinctions between the two”¹⁸ and that “eminent domain cannot be made less supreme than police power.”¹⁹ Petitioners further claim that the legislature, in amending RA 7432, relied on an erroneous contemporaneous construction that prior payment of taxes is required for tax credit.²⁰

Petitioners also contend that the tax deduction scheme violates Article XV, Section 4²¹ and Article XIII, Section 11²² of the Constitution because it shifts the State’s constitutional mandate or duty of improving the welfare of the elderly to the private sector.²³ Under the tax deduction scheme, the private sector shoulders 65% of the discount because only 35%²⁴ of it is actually returned by the government.²⁵ Consequently, the implementation of the tax deduction scheme prescribed under Section 4 of RA 9257 affects the businesses of petitioners.²⁶ Thus, there exists an actual case or controversy of transcendental importance which deserves judicious disposition on the merits by the highest court of the land.²⁷

Respondents’ Arguments

Respondents, on the other hand, question the filing of the instant Petition directly with the Supreme Court as this disregards the hierarchy of courts.²⁸ They likewise assert that there is no justiciable controversy as petitioners failed to prove

¹⁴ 553 Phil. 120 (2007).

¹⁵ *Rollo*, pp. 405-409.

¹⁶ *Supra*.

¹⁷ *Rollo*, pp. 410-420.

¹⁸ *Id.* at 411-412.

¹⁹ *Id.* at 413.

²⁰ *Id.* at 427-436.

²¹ Sec. 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

²² Sec. 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

²³ *Rollo*, pp. 421-427.

²⁴ Now 30% (Section 27 of the National Internal Revenue Code, as amended by Republic Act No. 9337, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 228 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.)

²⁵ *Rollo*, p. 425.

²⁶ *Id.* at 424.

²⁷ *Id.* at 394-401.

²⁸ *Id.* at 363-364.

that the tax deduction treatment is not a “fair and full equivalent of the loss sustained” by them.²⁹ As to the constitutionality of RA 9257 and its implementing rules and regulations, respondents contend that petitioners failed to overturn its presumption of constitutionality.³⁰ More important, respondents maintain that the tax deduction scheme is a legitimate exercise of the State’s police power.³¹

Our Ruling

The Petition lacks merit.

There exists an actual case or controversy.

We shall first resolve the procedural issue.

When the constitutionality of a law is put in issue, judicial review may be availed of only if the following requisites concur: “(1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the [question of constitutionality]; (3) recourse to judicial review is made at the earliest opportunity; and (4) the [question of constitutionality] is the *lis mota* of the case.”³²

In this case, petitioners are challenging the constitutionality of the tax deduction scheme provided in RA 9257 and the implementing rules and regulations issued by the DSWD and the DOF. Respondents, however, oppose the Petition on the ground that there is no actual case or controversy. We do not agree with respondents.

An actual case or controversy exists when there is “a conflict of legal rights” or “an assertion of opposite legal claims susceptible of judicial resolution.”³³ The Petition must therefore show that “the governmental act being challenged has a direct adverse effect on the individual challenging it.”³⁴ In this case, the tax deduction scheme challenged by petitioners has a direct adverse effect on them. Thus, it cannot be denied that there exists an actual case or controversy.

²⁹ Id. at 359-363.

³⁰ Id. at 368-370.

³¹ Id. at 364-368.

³² *General v. Urro*, G.R. No. 191560, March 29, 2011, 646 SCRA 567, 577.

³³ *Republic Telecommunications Holdings, Inc. v. Santiago*, G.R. No. 140338, August 7, 2007, 529 SCRA 232, 242.

³⁴ *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 270.

The validity of the 20% senior citizen discount and tax deduction scheme under RA 9257, as an exercise of police power of the State, has already been settled in Carlos Superdrug Corporation.

Petitioners posit that the resolution of this case lies in the determination of whether the legally mandated 20% senior citizen discount is an exercise of police power or eminent domain. If it is police power, no just compensation is warranted. But if it is eminent domain, the tax deduction scheme is unconstitutional because it is not a peso for peso reimbursement of the 20% discount given to senior citizens. Thus, it constitutes taking of private property without payment of just compensation.

At the outset, we note that this question has been settled in *Carlos Superdrug Corporation*.³⁵ In that case, we ruled:

Petitioners assert that Section 4(a) of the law is unconstitutional because it constitutes deprivation of private property. Compelling drugstore owners and establishments to grant the discount will result in a loss of profit and capital because 1) drugstores impose a mark-up of only 5% to 10% on branded medicines; and 2) the law failed to provide a scheme whereby drugstores will be justly compensated for the discount.

Examining petitioners' arguments, it is apparent that what petitioners are ultimately questioning is the validity of the tax deduction scheme as a reimbursement mechanism for the twenty percent (20%) discount that they extend to senior citizens.

Based on the afore-stated DOF Opinion, the tax deduction scheme does not fully reimburse petitioners for the discount privilege accorded to senior citizens. This is because the discount is treated as a deduction, a tax-deductible expense that is subtracted from the gross income and results in a lower taxable income. Stated otherwise, it is an amount that is allowed by law to reduce the income prior to the application of the tax rate to compute the amount of tax which is due. Being a tax deduction, the discount does not reduce taxes owed on a peso for peso basis but merely offers a fractional reduction in taxes owed.

Theoretically, the treatment of the discount as a deduction reduces the net income of the private establishments concerned. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments, were it not for R.A. No. 9257.

The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit. This

³⁵ Supra note 14.

constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word **just** is used to intensify the meaning of the word **compensation**, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.

Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.

The Court believes so.

The Senior Citizens Act was enacted primarily to maximize the contribution of senior citizens to nation-building, and to grant benefits and privileges to them for their improvement and well-being as the State considers them an integral part of our society.

The priority given to senior citizens finds its basis in the Constitution as set forth in the law itself. Thus, the Act provides:

SEC. 2. Republic Act No. 7432 is hereby amended to read as follows:

SECTION 1. *Declaration of Policies and Objectives.* — Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: "The State shall provide social justice in all phases of national development." Further, Article XIII, Section 11, provides: "The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children." Consonant with these constitutional principles the following are the declared policies of this Act:

... ..

(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.

To implement the above policy, the law grants a twenty percent discount to senior citizens for medical and dental services, and diagnostic and laboratory fees; admission fees charged by theaters, concert halls, circuses, carnivals, and

other similar places of culture, leisure and amusement; fares for domestic land, air and sea travel; utilization of services in hotels and similar lodging establishments, restaurants and recreation centers; and purchases of medicines for the exclusive use or enjoyment of senior citizens. As a form of reimbursement, the law provides that business establishments extending the twenty percent discount to senior citizens may claim the discount as a tax deduction.

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as “the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs.” It is “[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.”

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

Given these, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because petitioners have not taken time to calculate correctly and come up with a financial report, so that they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage.

In treating the discount as a tax deduction, petitioners insist that they will incur losses because, referring to the DOF Opinion, for every ₱1.00 senior citizen discount that petitioners would give, ₱0.68 will be shouldered by them as only ₱0.32 will be refunded by the government by way of a tax deduction.

To illustrate this point, petitioner Carlos Super Drug cited the anti-hypertensive maintenance drug *Norvasc* as an example. According to the latter, it acquires *Norvasc* from the distributors at ₱37.57 per tablet, and retails it at ₱39.60 (or at a margin of 5%). If it grants a 20% discount to senior citizens or an amount equivalent to ₱7.92, then it would have to sell *Norvasc* at ₱31.68 which translates to a loss from capital of ₱5.89 per tablet. Even if the government will allow a tax deduction, only ₱2.53 per tablet will be refunded and not the full amount of the discount which is ₱7.92. In short, only 32% of the 20% discount will be reimbursed to the drugstores.

Petitioners' computation is flawed. For purposes of reimbursement, the law states that the cost of the discount shall be deducted from gross income, the

amount of income derived from all sources before deducting allowable expenses, which will result in net income. Here, petitioners tried to show a loss on a per transaction basis, which should not be the case. An income statement, showing an accounting of petitioners' sales, expenses, and net profit (or loss) for a given period could have accurately reflected the effect of the discount on their income. Absent any financial statement, petitioners cannot substantiate their claim that they will be operating at a loss should they give the discount. In addition, the computation was erroneously based on the assumption that their customers consisted wholly of senior citizens. Lastly, the 32% tax rate is to be imposed on income, not on the amount of the discount.

Furthermore, it is unfair for petitioners to criticize the law because they cannot raise the prices of their medicines given the cutthroat nature of the players in the industry. It is a business decision on the part of petitioners to peg the mark-up at 5%. Selling the medicines below acquisition cost, as alleged by petitioners, is merely a result of this decision. Inasmuch as pricing is a property right, petitioners cannot reproach the law for being oppressive, simply because they cannot afford to raise their prices for fear of losing their customers to competition.

The Court is not oblivious of the retail side of the pharmaceutical industry and the competitive pricing component of the business. While the Constitution protects property rights, petitioners must accept the realities of business and the State, in the exercise of police power, can intervene in the operations of a business which may result in an impairment of property rights in the process.

Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as x x x reminder[s] that the right to property can be relinquished upon the command of the State for the promotion of public good.

Undeniably, the success of the senior citizens program rests largely on the support imparted by petitioners and the other private establishments concerned. This being the case, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Without sufficient proof that Section 4 (a) of R.A. No. 9257 is arbitrary, and that the continued implementation of the same would be unconscionably detrimental to petitioners, the Court will refrain from quashing a legislative act.³⁶ (Bold in the original; underline supplied)

We, thus, found that the 20% discount as well as the tax deduction scheme is a valid exercise of the police power of the State.

No compelling reason has been proffered to overturn, modify or abandon the ruling in Carlos Superdrug Corporation.

³⁶ Id. at 128-147.

Petitioners argue that we have previously ruled in *Central Luzon Drug Corporation*³⁷ that the 20% discount is an exercise of the power of eminent domain, thus, requiring the payment of just compensation. They urge us to re-examine our ruling in *Carlos Superdrug Corporation*³⁸ which allegedly reversed the ruling in *Central Luzon Drug Corporation*.³⁹ They also point out that *Carlos Superdrug Corporation*⁴⁰ recognized that the tax deduction scheme under the assailed law does not provide for sufficient just compensation.

We agree with petitioners' observation that there are statements in *Central Luzon Drug Corporation*⁴¹ describing the 20% discount as an exercise of the power of eminent domain, *viz.*:

[T]he privilege enjoyed by senior citizens does not come *directly* from the State, but rather from the private establishments concerned. Accordingly, the *tax credit* benefit granted to these establishments **can be deemed** as their *just compensation* for private property taken by the State for public use.

The concept of *public use* is no longer confined to the traditional notion of *use by the public*, but held synonymous with *public interest*, *public benefit*, *public welfare*, and *public convenience*. The discount privilege to which our senior citizens are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The discounts given would have entered the coffers and formed part of the *gross sales* of the private establishments concerned, were it not for RA 7432. The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for *public use or benefit*.

As a result of the 20 percent discount imposed by RA 7432, respondent becomes entitled to a *just compensation*. This term refers not only to the issuance of a *tax credit* certificate indicating the correct amount of the discounts given, but also to the promptness in its release. Equivalent to the payment of property taken by the State, such issuance — when not done within a *reasonable time* from the grant of the discounts — cannot be considered as *just compensation*. In effect, respondent is made to suffer the consequences of being immediately deprived of its revenues while awaiting actual receipt, through the certificate, of the equivalent amount it needs to cope with the reduction in its revenues.

Besides, the taxation power can also be used as an implement for the exercise of the power of eminent domain. Tax measures are but “enforced contributions exacted on pain of penal sanctions” and “clearly imposed for a *public purpose*.” In recent years, the power to tax has indeed become a most effective tool to realize social justice, *public welfare*, and the equitable distribution of wealth.

While it is a declared commitment under Section 1 of RA 7432, social justice “cannot be invoked to trample on the rights of property owners who under our Constitution and laws are also entitled to protection. The social justice

³⁷ Supra note 5.

³⁸ Supra note 14.

³⁹ Supra note 5.

⁴⁰ Supra note 14.

⁴¹ Supra note 5.

consecrated in our [C]onstitution [is] not intended to take away rights from a person and give them to another who is not entitled thereto.” For this reason, a just compensation for income that is taken away from respondent becomes necessary. It is in the *tax credit* that our legislators find support to realize social justice, and no administrative body can alter that fact.

To put it differently, a private establishment that merely breaks even — without the discounts yet — will surely start to incur losses because of such discounts. The same effect is expected if its mark-up is less than 20 percent, and if all its sales come from retail purchases by senior citizens. Aside from the observation we have already raised earlier, it will also be grossly unfair to an establishment if the discounts will be treated merely as deductions from either its *gross income* or its *gross sales*. Operating at a loss through no fault of its own, it will realize that the *tax credit* limitation under RR 2-94 is inutile, if not improper. Worse, profit-generating businesses will be put in a better position if they avail themselves of tax credits denied those that are losing, because no taxes are due from the latter.⁴² (*Italics in the original; emphasis supplied*)

The above was partly incorporated in our ruling in *Carlos Superdrug Corporation*⁴³ when we stated *preliminarily* that—

Petitioners assert that Section 4(a) of the law is unconstitutional because it constitutes deprivation of private property. Compelling drugstore owners and establishments to grant the discount will result in a loss of profit and capital because 1) drugstores impose a mark-up of only 5% to 10% on branded medicines; and 2) the law failed to provide a scheme whereby drugstores will be justly compensated for the discount.

Examining petitioners’ arguments, it is apparent that what petitioners are ultimately questioning is the validity of the tax deduction scheme as a reimbursement mechanism for the twenty percent (20%) discount that they extend to senior citizens.

Based on the afore-stated DOF Opinion, the tax deduction scheme does not fully reimburse petitioners for the discount privilege accorded to senior citizens. This is because the discount is treated as a deduction, a tax-deductible expense that is subtracted from the gross income and results in a lower taxable income. Stated otherwise, it is an amount that is allowed by law to reduce the income prior to the application of the tax rate to compute the amount of tax which is due. Being a tax deduction, the discount does not reduce taxes owed on a peso for peso basis but merely offers a fractional reduction in taxes owed.

Theoretically, the treatment of the discount as a deduction reduces the net income of the private establishments concerned. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments, were it not for R.A. No. 9257.

The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit. This

⁴² Id. at 335-337.

⁴³ Supra note 14.

constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word **just** is used to intensify the meaning of the word **compensation**, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.

Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.

The Court believes so.⁴⁴

This, notwithstanding, we went on to rule in *Carlos Superdrug Corporation*⁴⁵ that the 20% discount and tax deduction scheme is a valid exercise of the police power of the State.

The present case, thus, affords an opportunity for us to clarify the above-quoted statements in *Central Luzon Drug Corporation*⁴⁶ and *Carlos Superdrug Corporation*.⁴⁷

First, we note that the above-quoted disquisition on eminent domain in *Central Luzon Drug Corporation*⁴⁸ is *obiter dicta* and, thus, not binding precedent. As stated earlier, in *Central Luzon Drug Corporation*,⁴⁹ we ruled that the BIR acted *ultra vires* when it effectively treated the 20% discount as a tax deduction, under Sections 2.i and 4 of RR No. 2-94, despite the clear wording of the previous law that the same should be treated as a tax credit. We were, therefore, not confronted in that case with the issue as to whether the 20% discount is an exercise of police power or eminent domain.

Second, although we adverted to *Central Luzon Drug Corporation*⁵⁰ in our ruling in *Carlos Superdrug Corporation*,⁵¹ this referred only to preliminary matters. A fair reading of *Carlos Superdrug Corporation*⁵² would show that we categorically ruled therein that the 20% discount is a valid exercise of police

⁴⁴ Id. at 128-130.

⁴⁵ Supra note 14.

⁴⁶ Supra note 5.

⁴⁷ Supra note 14.

⁴⁸ Supra note 5.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Supra note 14.

⁵² Id.

power. Thus, even if the current law, through its tax deduction scheme (which abandoned the tax credit scheme under the previous law), does not provide for a peso for peso reimbursement of the 20% discount given by private establishments, no constitutional infirmity obtains because, being a valid exercise of police power, payment of just compensation is not warranted.

We have carefully reviewed the basis of our ruling in *Carlos Superdrug Corporation*⁵³ and we find no cogent reason to overturn, modify or abandon it. We also note that petitioners' arguments are a mere reiteration of those raised and resolved in *Carlos Superdrug Corporation*.⁵⁴ Thus, we sustain *Carlos Superdrug Corporation*.⁵⁵

Nonetheless, we deem it proper, in what follows, to amplify our explanation in *Carlos Superdrug Corporation*⁵⁶ as to why the 20% discount is a valid exercise of police power and why it may not, *under the specific circumstances of this case*, be considered as an exercise of the power of eminent domain contrary to the *obiter* in *Central Luzon Drug Corporation*.⁵⁷

Police power versus eminent domain.

Police power is the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare.⁵⁸ The only limitation is that the restriction imposed should be reasonable, not oppressive.⁵⁹ In other words, to be a valid exercise of police power, it must have a lawful subject or objective and a lawful method of accomplishing the goal.⁶⁰ Under the police power of the State, "property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government."⁶¹ The State "may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare [as long as] the interference [is] reasonable and not arbitrary."⁶² Eminent domain, on the other hand, is the inherent power of the State to take or appropriate private property for public use.⁶³ The Constitution, however, requires that private property shall not be taken without due process of law and the payment of just compensation.⁶⁴

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Supra note 5.

⁵⁸ *Gerochi v. Department of Energy*, 554 Phil. 563, 579 (2007).

⁵⁹ *Mirasol v. Department of Public Works and Highways*, 523 Phil. 713, 747 (2006).

⁶⁰ *Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 808-809 (1989).

⁶¹ *Social Justice Society (SJS) v. Atienza, Jr.*, G.R. No. 156052, February 13, 2008, 545 SCRA 92, 139.

⁶² Id. at 139-140.

⁶³ *Apo Fruits Corporation v. Land Bank*, G.R. No. 164195, October 12, 2010, 632 SCRA 727, 739.

⁶⁴ *Heirs of Suguitan v. City of Mandaluyong*, 384 Phil. 676, 688 (2000).

Traditional distinctions exist between police power and eminent domain.

In the exercise of police power, a property right is impaired by regulation,⁶⁵ or the use of property is merely prohibited, regulated or restricted⁶⁶ to promote public welfare. In such cases, there is no compensable taking, hence, payment of just compensation is not required. Examples of these regulations are property condemned for being noxious or intended for noxious purposes (*e.g.*, a building on the verge of collapse to be demolished for public safety, or obscene materials to be destroyed in the interest of public morals)⁶⁷ as well as zoning ordinances prohibiting the use of property for purposes injurious to the health, morals or safety of the community (*e.g.*, dividing a city's territory into residential and industrial areas).⁶⁸ It has, thus, been observed that, in the exercise of police power (as distinguished from eminent domain), although the regulation affects the right of ownership, none of the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public.⁶⁹

On the other hand, in the exercise of the power of eminent domain, property interests are appropriated and applied to some public purpose which necessitates the payment of just compensation therefor. Normally, the title to and possession of the property are transferred to the expropriating authority. Examples include the acquisition of lands for the construction of public highways as well as agricultural lands acquired by the government under the agrarian reform law for redistribution to qualified farmer beneficiaries. However, it is a settled rule that the acquisition of title or total destruction of the property is not essential for "taking" under the power of eminent domain to be present.⁷⁰ Examples of these include establishment of easements such as where the land owner is perpetually deprived of his proprietary rights because of the hazards posed by electric transmission lines constructed above his property⁷¹ or the compelled interconnection of the telephone system between the government and a private company.⁷² In these cases, although the private property owner is not divested of ownership or possession, payment of just compensation is warranted because of the burden placed on the property for the use or benefit of the public.

The 20% senior citizen discount is an exercise of police power.

It may not always be easy to determine whether a challenged governmental act is an exercise of police power or eminent domain. The very nature of police

⁶⁵ Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, at 420 (2003).

⁶⁶ De Leon and De Leon, Jr., *Philippine Constitutional Law: Principles and Cases Vol. 1*, at 696 (2012).

⁶⁷ *Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform*, supra note 60 at 804.

⁶⁸ *Seng Kee & Co. v. Earnshaw*, 56 Phil. 204 (1931) cited in Bernas, supra.

⁶⁹ Bernas, supra at 421.

⁷⁰ *Id.* at 420.

⁷¹ *National Power Corporation v. Gutierrez*, 271 Phil. 1 (1991) cited in Bernas, supra at 422-423.

⁷² *Republic v. Philippine Long Distance Telephone Co.*, 136 Phil. 20 (1969) cited in Bernas, supra at 423-424.

power as elastic and responsive to various social conditions⁷³ as well as the evolving meaning and scope of public use⁷⁴ and just compensation⁷⁵ in eminent domain evinces that these are not static concepts. Because of the exigencies of rapidly changing times, Congress may be compelled to adopt or experiment with different measures to promote the general welfare which may not fall squarely within the traditionally recognized categories of police power and eminent domain. The judicious approach, therefore, is to look at the nature and effects of the challenged governmental act and decide, on the basis thereof, whether the act is the exercise of police power or eminent domain. Thus, we now look at the nature and effects of the 20% discount to determine if it constitutes an exercise of police power or eminent domain.

The 20% discount is intended to improve the welfare of senior citizens who, at their age, are less likely to be gainfully employed, more prone to illnesses and other disabilities, and, thus, in need of subsidy in purchasing basic commodities. It may not be amiss to mention also that the discount serves to honor senior citizens who presumably spent the productive years of their lives on contributing to the development and progress of the nation. This distinct cultural Filipino practice of honoring the elderly is an integral part of this law.

As to its nature and effects, the 20% discount is a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern.⁷⁶ In turn, this affects the amount of profits or income/gross sales that a private establishment can derive from senior citizens. In other words, the subject regulation affects the pricing, and, hence, the profitability of a private establishment. However, it does not purport to appropriate or burden specific properties, used in the operation or conduct of the business of private establishments, for the use or benefit of the public, or senior citizens for that matter, but merely regulates the pricing of goods and services relative to, and the amount of profits or income/gross sales that such private establishments may derive from, senior citizens.

The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which

⁷³ *Philippine Long Distance Telephone Company v. City of Davao*, 122 Phil. 478, 489 (1965).

⁷⁴ *See Heirs of Ardon v. Reyes*, 210 Phil. 187, 197-201 (1983).

⁷⁵ *See Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform*, supra note 60 at 819-822.

⁷⁶ Article XIII, Section 11 of the Constitution provides:

The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

are traditionally regarded as police power measures.⁷⁷ These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate of return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. Nonetheless, to the degree material to the resolution of this case, the 20% discount may be properly viewed as belonging to the category of price regulatory measures which affect the profitability of establishments subjected thereto.

On its face, therefore, the subject regulation is a police power measure.

The *obiter* in *Central Luzon Drug Corporation*,⁷⁸ however, describes the 20% discount as an exercise of the power of eminent domain and the tax credit, under the previous law, equivalent to the amount of discount given as the just compensation therefor. The reason is that (1) the discount would have formed part of the gross sales of the establishment were it not for the law prescribing the 20% discount, and (2) the permanent reduction in total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit.

The flaw in this reasoning is in its premise. It presupposes that the subject regulation, which impacts the pricing and, hence, the profitability of a private establishment, *automatically* amounts to a deprivation of property without due process of law. If this were so, then all price and rate of return on investment control laws would have to be invalidated because they impact, at some level, the regulated establishment's profits or income/gross sales, yet there is no provision for payment of just compensation. It would also mean that government cannot set price or rate of return on investment limits, which reduce the profits or income/gross sales of private establishments, if no just compensation is paid *even if* the measure is not confiscatory. The *obiter* is, thus, at odds with the settled doctrine that the State can employ police power measures to regulate the pricing of goods and services, and, hence, the profitability of business establishments in order to pursue legitimate State objectives for the common good, provided that the regulation does not go too far as to amount to "taking."⁷⁹

In *City of Manila v. Laguio, Jr.*,⁸⁰ we recognized that—

⁷⁷ See *Munn v. Illinois*, 94 U.S. 113 (1877); *People v. Chu Chi*, 92 Phil. 977 (1953); and *Alalayan v. National Power Corporation*, 133 Phil. 279 (1968). The rate-making or rate-regulation by governmental bodies of public utilities is included in this category of police power measures.

⁷⁸ *Supra* note 5.

⁷⁹ See *Munn v. Illinois*, 94 U.S. 113 (1877).

⁸⁰ 495 Phil. 289 (2005).

x x x a taking also could be found if government regulation of the use of property went “too far.” When regulation reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to support the act. While property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.

No formula or rule can be devised to answer the questions of what is too far and when regulation becomes a taking. In *Mahon*, Justice Holmes recognized that it was “a question of degree and therefore cannot be disposed of by general propositions.” On many other occasions as well, the U.S. Supreme Court has said that the issue of when regulation constitutes a taking is a matter of considering the facts in each case. The Court asks whether justice and fairness require that the economic loss caused by public action must be compensated by the government and thus borne by the public as a whole, or whether the loss should remain concentrated on those few persons subject to the public action.⁸¹

The impact or effect of a regulation, such as the one under consideration, must, thus, be determined on a case-to-case basis. Whether that line between permissible regulation under police power and “taking” under eminent domain has been crossed must, under the specific circumstances of this case, be subject to proof and the one assailing the constitutionality of the regulation carries the heavy burden of proving that the measure is unreasonable, oppressive or confiscatory. The time-honored rule is that the burden of proving the unconstitutionality of a law rests upon the one assailing it and “the burden becomes heavier when police power is at issue.”⁸²

The 20% senior citizen discount has not been shown to be unreasonable, oppressive or confiscatory.

In *Alalayan v. National Power Corporation*,⁸³ petitioners, who were franchise holders of electric plants, challenged the validity of a law limiting their allowable net profits to no more than 12% per annum of their investments plus two-month operating expenses. In rejecting their plea, we ruled that, in an earlier case, it was found that 12% is a reasonable rate of return and that petitioners failed to prove that the aforesaid rate is confiscatory in view of the presumption of constitutionality.⁸⁴

We adopted a similar line of reasoning in *Carlos Superdrug Corporation*⁸⁵ when we ruled that petitioners therein failed to prove that the 20% discount is arbitrary, oppressive or confiscatory. We noted that no evidence, such as a

⁸¹ Id. at 320-321.

⁸² *Mirasol v. Department of Public Works and Highways*, supra note 59.

⁸³ 133 Phil. 279 (1968).

⁸⁴ Id. at 292.

⁸⁵ Supra note 14.

financial report, to establish the impact of the 20% discount on the overall profitability of petitioners was presented in order to show that they would be operating at a loss due to the subject regulation or that the continued implementation of the law would be unconscionably detrimental to the business operations of petitioners. In the case at bar, petitioners proceeded with a hypothetical computation of the alleged loss that they will suffer similar to what the petitioners in *Carlos Superdrug Corporation*⁸⁶ did. Petitioners went directly to this Court without first establishing the factual bases of their claims. Hence, the present recourse must, likewise, fail.

Because all laws enjoy the presumption of constitutionality, courts will uphold a law's validity if any set of facts may be conceived to sustain it.⁸⁷ On its face, we find that there are at least two conceivable bases to sustain the subject regulation's validity absent clear and convincing proof that it is unreasonable, oppressive or confiscatory. Congress may have legitimately concluded that business establishments have the capacity to absorb a decrease in profits or income/gross sales due to the 20% discount without substantially affecting the reasonable rate of return on their investments considering (1) not all customers of a business establishment are senior citizens and (2) the level of its profit margins on goods and services offered to the general public. Concurrently, Congress may have, likewise, legitimately concluded that the establishments, which will be required to extend the 20% discount, have the capacity to revise their pricing strategy so that whatever reduction in profits or income/gross sales that they may sustain because of sales to senior citizens, can be recouped through higher mark-ups or from other products not subject of discounts. As a result, the discounts resulting from sales to senior citizens will not be confiscatory or unduly oppressive.

In sum, we sustain our ruling in *Carlos Superdrug Corporation*⁸⁸ that the 20% senior citizen discount and tax deduction scheme are valid exercises of police power of the State absent a clear showing that it is arbitrary, oppressive or confiscatory.

Conclusion

In closing, we note that petitioners hypothesize, consistent with our previous ratiocinations, that the discount will force establishments to raise their prices in order to compensate for its impact on overall profits or income/gross sales. The general public, or those not belonging to the senior citizen class, are, thus, made to effectively shoulder the subsidy for senior citizens. This, in petitioners' view, is unfair.

⁸⁶ Id.

⁸⁷ *Basco v. Philippine Amusements and Gaming Corporation*, 274 Phil. 323, 335 (1991).

⁸⁸ *Supra* note 14.

As already mentioned, Congress may be reasonably assumed to have foreseen this eventuality. But, more importantly, this goes into the wisdom, efficacy and expediency of the subject law which is not proper for judicial review. In a way, this law pursues its social equity objective in a non-traditional manner unlike past and existing direct subsidy programs of the government for the poor and marginalized sectors of our society. Verily, Congress must be given sufficient leeway in formulating welfare legislations given the enormous challenges that the government faces relative to, among others, resource adequacy and administrative capability in implementing social reform measures which aim to protect and uphold the interests of those most vulnerable in our society. In the process, the individual, who enjoys the rights, benefits and privileges of living in a democratic polity, must bear his share in supporting measures intended for the common good. This is only fair.

In fine, without the requisite showing of a clear and unequivocal breach of the Constitution, the validity of the assailed law must be sustained.

Refutation of the Dissent

The main points of Justice Carpio's Dissent may be summarized as follows: (1) the discussion on eminent domain in *Central Luzon Drug Corporation*⁸⁹ is not *obiter dicta*; (2) allowable taking, in police power, is limited to property that is destroyed or placed outside the commerce of man for public welfare; (3) the amount of mandatory discount is private property within the ambit of Article III, Section 9⁹⁰ of the Constitution; and (4) the permanent reduction in a private establishment's total revenue, arising from the mandatory discount, is a taking of private property for public use or benefit, hence, an exercise of the power of eminent domain requiring the payment of just compensation.

I

We maintain that the discussion on eminent domain in *Central Luzon Drug Corporation*⁹¹ is *obiter dicta*.

As previously discussed, in *Central Luzon Drug Corporation*,⁹² the BIR, pursuant to Sections 2.i and 4 of RR No. 2-94, treated the senior citizen discount in the previous law, RA 7432, as a tax deduction instead of a tax credit despite the *clear* provision in that law which stated –

SECTION 4. *Privileges for the Senior Citizens.* – The senior citizens shall be entitled to the following:

⁸⁹ Supra note 5.

⁹⁰ Section 9. Private property shall not be taken for public use without just compensation.

⁹¹ Supra note 5.

⁹² Id.

a) The grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment, 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)

Thus, the Court ruled that the subject revenue regulation violated the law, *viz*:

The 20 percent discount required by the law to be given to senior citizens is a tax credit, not merely a tax deduction from the gross income or gross sale of the establishment concerned. A tax credit is used by a private establishment only after the tax has been computed; a tax deduction, before the tax is computed. RA 7432 unconditionally grants a tax credit to all covered entities. Thus, the provisions of the revenue regulation that withdraw or modify such grant are void. Basic is the rule that administrative regulations cannot amend or revoke the law.⁹³

As can be readily seen, the discussion on eminent domain was *not necessary* in order to arrive at this conclusion. All that was needed was to point out that the revenue regulation contravened the law which it sought to implement. And, precisely, this was done in *Central Luzon Drug Corporation*⁹⁴ by comparing the wording of the previous law vis-à-vis the revenue regulation; employing the rules of statutory construction; and applying the settled principle that a regulation cannot amend the law it seeks to implement.

A close reading of *Central Luzon Drug Corporation*⁹⁵ would show that the Court *went on* to state that the tax credit “can be deemed” as just compensation only to explain *why* the previous law provides for a tax credit instead of a tax deduction. The Court *surmised* that the tax credit was a form of just compensation given to the establishments covered by the 20% discount. However, the reason why the previous law provided for a tax credit and not a tax deduction was *not necessary* to resolve the issue as to whether the revenue regulation contravenes the law. Hence, the discussion on eminent domain is *obiter dicta*.

A court, in resolving cases before it, may look into the possible purposes or reasons that impelled the enactment of a particular statute or legal provision. However, statements made relative thereto are not always necessary in resolving the actual controversies presented before it. This was the case in *Central Luzon Drug Corporation*⁹⁶ resulting in that unfortunate statement that the tax credit “can be deemed” as just compensation. This, in turn, led to the erroneous conclusion, by deductive reasoning, that the 20% discount is an exercise of the power of eminent domain. The Dissent essentially adopts this theory and reasoning which,

⁹³ Id. at 315.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

as will be shown below, is contrary to settled principles in police power and eminent domain analysis.

II

The Dissent discusses at length the doctrine on “taking” in police power which occurs when private property is destroyed or placed outside the commerce of man. Indeed, there is a whole class of police power measures which justify the destruction of private property in order to preserve public health, morals, safety or welfare. As earlier mentioned, these would include a building on the verge of collapse or confiscated obscene materials as well as those mentioned by the Dissent with regard to property used in violating a criminal statute or one which constitutes a nuisance. In such cases, no compensation is required.

However, it is equally true that there is another class of police power measures which do not involve the destruction of private property but *merely regulate* its use. The minimum wage law, zoning ordinances, price control laws, laws regulating the operation of motels and hotels, laws limiting the working hours to eight, and the like would fall under this category. The examples cited by the Dissent, likewise, fall under this category: Article 157 of the Labor Code, Sections 19 and 18 of the Social Security Law, and Section 7 of the Pag-IBIG Fund Law. These laws merely regulate or, to use the term of the Dissent, burden the conduct of the affairs of business establishments. In such cases, payment of just compensation is not required because they fall within the sphere of permissible police power measures. The senior citizen discount law falls under this latter category.

III

The Dissent proceeds from the theory that the permanent reduction of profits or income/gross sales, due to the 20% discount, is a “taking” of private property for public purpose without payment of just compensation.

At the outset, it must be emphasized that petitioners **never** presented **any evidence** to establish that they were forced to suffer enormous losses or operate at a loss due to the effects of the assailed law. They came directly to this Court and provided a hypothetical computation of the loss they would allegedly suffer due to the operation of the assailed law. The central premise of the Dissent’s argument that the 20% discount results in a permanent reduction in profits or income/gross sales, or forces a business establishment to operate at a loss is, thus, **wholly unsupported** by competent evidence. To be sure, the Court can invalidate a law which, on its face, is arbitrary, oppressive or confiscatory.⁹⁷ But this is not the case here.

⁹⁷ See, for instance, *City of Manila v. Laguio, Jr.*, supra note 80.

In the case at bar, evidence is indispensable before a determination of a constitutional violation can be made because of the following reasons.

First, the assailed law, by imposing the senior citizen discount, does not take any of the properties used by a business establishment like, say, the land on which a manufacturing plant is constructed or the equipment being used to produce goods or services.

Second, rather than taking specific properties of a business establishment, the senior citizen discount law *merely regulates* the prices of the goods or services being sold to senior citizens by mandating a 20% discount. Thus, if a product is sold at ₱10.00 to the general public, then it shall be sold at ₱8.00 (*i.e.*, ₱10.00 less 20%) to senior citizens. Note that the law does not impose at what *specific* price the product shall be sold, only that a 20% discount shall be given to senior citizens based on the price set by the business establishment. A business establishment is, thus, free to adjust the prices of the goods or services it provides to the general public. Accordingly, it can increase the price of the above product to ₱20.00 but is required to sell it at ₱16.00 (*i.e.*, ₱20.00 less 20%) to senior citizens.

Third, because the law impacts the prices of the goods or services of a particular establishment relative to its sales to senior citizens, its profits or income/gross sales are affected. The extent of the impact would, however, depend on the profit margin of the business establishment on a particular good or service. If a product costs ₱5.00 to produce and is sold at ₱10.00, then the profit⁹⁸ is ₱5.00⁹⁹ or a profit margin¹⁰⁰ of 50%.¹⁰¹ Under the assailed law, the aforesaid product would have to be sold at ₱8.00 to senior citizens yet the business would still earn ₱3.00¹⁰² or a 30%¹⁰³ profit margin. On the other hand, if the product costs ₱9.00 to produce and is required to be sold at ₱8.00 to senior citizens, then the business would experience a loss of ₱1.00.¹⁰⁴ But note that since not all customers of a business establishment are senior citizens, the business establishment may continue to earn ₱1.00 from non-senior citizens which, in turn, can offset any loss arising from sales to senior citizens.

Fourth, when the law imposes the 20% discount in favor of senior citizens, it *does not* prevent the business establishment from revising its pricing strategy.

⁹⁸ Profit= selling price-cost price

⁹⁹ 10-5=5

¹⁰⁰ Profit margin= profit/selling price.

¹⁰¹ 5/10= .50

¹⁰² 8-5=3

This example merely illustrates the effect of the 20% discount on the selling price and profit. To be more accurate, however, the business will not only earn a profit of ₱3.00 but will also be entitled to a tax deduction pertaining to the 20% discount given. In short, the profit would be greater than ₱3.00.

¹⁰³ 3/10= .30

¹⁰⁴ By parity of reasoning, as in *supra* note 102, the exact loss will not necessarily be ₱1.00 because the business may claim the 20% discount as a tax deduction so that the loss may be less than ₱1.00.

By revising its pricing strategy, a business establishment can recoup any reduction of profits or income/gross sales which would otherwise arise from the giving of the 20% discount. To illustrate, suppose A has two customers: X, a senior citizen, and Y, a non-senior citizen. Prior to the law, A sells his products at ₱10.00 a piece to X and Y resulting in income/gross sales of ₱20.00 (₱10.00 + ₱10.00). With the passage of the law, A must now sell his product to X at ₱8.00 (*i.e.*, ₱10.00 less 20%) so that his income/gross sales would be ₱18.00 (₱8.00 + ₱10.00) or lower by ₱2.00. To prevent this from happening, A decides to increase the price of his products to ₱11.11 per piece. Thus, he sells his product to X at ₱8.89 (*i.e.*, ₱11.11 less 20%) and to Y at ₱11.11. As a result, his income/gross sales would still be ₱20.00¹⁰⁵ (₱8.89 + ₱11.11). The capacity, then, of business establishments to revise their pricing strategy makes it possible for them not to suffer any reduction in profits or income/gross sales, or, in the alternative, mitigate the reduction of their profits or income/gross sales even after the passage of the law. In other words, business establishments have the capacity to adjust their prices so that they may remain profitable even under the operation of the assailed law.

The Dissent, however, states that –

The explanation by the majority that private establishments can always increase their prices to recover the mandatory discount will only encourage private establishments to adjust their prices upwards to the prejudice of customers who do not enjoy the 20% discount. It was likewise suggested that if a company increases its prices, despite the application of the 20% discount, the establishment becomes more profitable than it was before the implementation of R.A. 7432. Such an economic justification is self-defeating, for more consumers will suffer from the price increase than will benefit from the 20% discount. Even then, such ability to increase prices cannot legally validate a violation of the eminent domain clause.¹⁰⁶

But, if it is possible that the business establishment, by adjusting its prices, will suffer no reduction in its profits or income/gross sales (or suffer some reduction but continue to operate profitably) despite giving the discount, what would be the basis to strike down the law? If it is possible that the business establishment, by adjusting its prices, will not be unduly burdened, how can there be a finding that the assailed law is an unconstitutional exercise of police power or eminent domain?

That there may be a burden placed on business establishments or the consuming public as a result of the operation of the assailed law is not, by itself, a ground to declare it unconstitutional for this goes into the wisdom and expediency

¹⁰⁵ This merely illustrates how a company can adjust its prices to recoup or mitigate any possible reduction of profits or income/gross sales under the operation of the assailed law. However, to be more accurate, if A were to raise the price of his products to ₱11.11 a piece, he would not only retain his previous income/gross sales of ₱20.00 but would be better off because he would be able to claim a tax deduction equivalent to the 20% discount he gave to X.

¹⁰⁶ Dissenting Opinion, p. 14.

of the law. The cost of most, if not all, regulatory measures of the government on business establishments is ultimately passed on to the consumers but that, by itself, does not justify the wholesale nullification of these measures. It is a basic postulate of our democratic system of government that the Constitution is a social contract whereby the people have surrendered their sovereign powers to the State for the common good.¹⁰⁷ All persons may be burdened by regulatory measures intended for the common good or to serve some important governmental interest, such as protecting or improving the welfare of a special class of people for which the Constitution affords preferential concern. Indubitably, the one assailing the law has the heavy burden of proving that the regulation is unreasonable, oppressive or confiscatory, or has gone “too far” as to amount to a “taking.” Yet, here, the Dissent would have this Court nullify the law without any proof of such nature.

Further, this Court is not the proper forum to debate the economic theories or realities that impelled Congress to shift from the tax credit to the tax deduction scheme. It is not within our power or competence to judge which scheme is more or less burdensome to business establishments or the consuming public and, thereafter, to choose which scheme the State should use or pursue. The shift from the tax credit to tax deduction scheme is a policy determination by Congress and the Court will respect it for as long as there is no showing, as here, that the subject regulation has transgressed constitutional limitations.

Unavoidably, the lack of evidence constrains the Dissent to rely on *speculative* and *hypothetical* argumentation when it states that the 20% discount is a significant amount and not a minimal loss (which erroneously assumes that the discount automatically results in a loss when it is possible that the profit margin is greater than 20% and/or the pricing strategy can be revised to prevent or mitigate any reduction in profits or income/gross sales as illustrated above),¹⁰⁸ and not all private establishments make a 20% profit margin (which conversely implies that there are those who make more and, thus, would not be greatly affected by this regulation).¹⁰⁹

In fine, because of the *possible* scenarios discussed above, we cannot assume that the 20% discount results in a permanent reduction in profits or income/gross sales, much less that business establishments are forced to operate at a loss under the assailed law. And, even if we gratuitously assume that the 20% discount results in *some* degree of reduction in profits or income/gross sales, we cannot assume that such reduction is arbitrary, oppressive or confiscatory. To repeat, there is no actual proof to back up this claim, and it could be that the loss suffered by a business establishment was occasioned through its fault or negligence in not adapting to the effects of the assailed law. The law uniformly

¹⁰⁷ *Marcos v. Manglapus*, 258 Phil. 479, 504 (1989).

¹⁰⁸ Parenthetical comment supplied.

¹⁰⁹ *Id.*

applies to all business establishments covered thereunder. There is, therefore, no unjust discrimination as the aforesaid business establishments are faced with the same constraints.

The necessity of proof is all the more pertinent in this case because, as similarly observed by Justice Velasco in his *Concurring Opinion*, the law has been in operation for over nine years now. However, the grim picture painted by petitioners on the unconscionable losses to be indiscriminately suffered by business establishments, which should have led to the closure of numerous business establishments, has not come to pass.

Verily, we cannot invalidate the assailed law based on assumptions and conjectures. Without adequate proof, the presumption of constitutionality must prevail.

IV

At this juncture, we note that the Dissent modified its original arguments by including a new paragraph, to wit:

Section 9, Article III of the 1987 Constitution speaks of private property without any distinction. It does not state that there should be profit before the taking of property is subject to just compensation. The private property referred to for purposes of taking could be inherited, donated, purchased, mortgaged, or as in this case, part of the gross sales of private establishments. They are all private property and any taking should be attended by corresponding payment of just compensation. The 20% discount granted to senior citizens belong to private establishments, whether these establishments make a profit or suffer a loss. In fact, the 20% discount applies to **non-profit establishments** like country, social, or golf clubs which are open to the public and not only for exclusive membership. The issue of profit or loss to the establishments is immaterial.¹¹⁰

Two things may be said of this argument.

First, it contradicts the rest of the arguments of the Dissent. After it states that the issue of profit or loss is immaterial, the Dissent proceeds to argue that the 20% discount is not a minimal loss¹¹¹ and that the 20% discount forces business establishments to operate at a loss.¹¹² Even the obiter in *Central Luzon Drug Corporation*,¹¹³ which the Dissent essentially adopts and relies on, is premised on the permanent reduction of total revenues and the loss that business establishments will be forced to suffer in arguing that the 20%

¹¹⁰ Dissenting Opinion, p. 9.

¹¹¹ Id. at 12.

¹¹² Id. At 13.

¹¹³ Supra note 5.

discount constitutes a “taking” under the power of eminent domain. Thus, when the Dissent now argues that the issue of profit or loss is immaterial, it contradicts itself because it later argues, in order to justify that there is a “taking” under the power of eminent domain in this case, that the 20% discount forces business establishments to suffer a significant loss or to operate at a loss.

Second, this argument suffers from the same flaw as the Dissent's original arguments. It is an erroneous characterization of the 20% discount.

According to the Dissent, the 20% discount is part of the gross sales and, hence, private property belonging to business establishments. However, as previously discussed, the 20% discount is not private property actually owned and/or used by the business establishment. It should be distinguished from properties like lands or buildings actually used in the operation of a business establishment which, if appropriated for public use, would amount to a “taking” under the power of eminent domain.

Instead, the 20% discount is a regulatory measure which impacts the pricing and, hence, the profitability of business establishments. At the time the discount is imposed, no particular property of the business establishment can be said to be “taken.” That is, the State does not acquire or take anything from the business establishment in the way that it takes a piece of private land to build a public road. While the 20% discount may form part of the potential profits or income/gross sales¹¹⁴ of the business establishment, as similarly characterized by Justice Bersamin in his Concurring Opinion, potential profits or income/gross sales are not private property, specifically cash or money, already belonging to the business establishment. They are a mere expectancy because they are potential fruits of the successful conduct of the business.

Prior to the sale of goods or services, a business establishment may be subject to State regulations, such as the 20% senior citizen discount, which may impact the level or amount of profits or income/gross sales that can be generated by such establishment. For this reason, the validity of the discount is to be determined based on its overall effects on the operations of the business establishment.

¹¹⁴ The Dissent uses the term “gross sales” instead of “income” but “income” and “gross sales” are used in the same sense throughout this ponencia. That is, they are money derived from the sale of goods or services. The reference to or mention of “income”/“gross sales”, apart from “profits,” is intentionally made because the 20% discount may cover more than the profits from the sale of goods or services in cases where the profit margin is less than 20% and the business establishment does not adjust its pricing strategy.

Income/gross sales is a broader concept vis-a-vis profits because income/gross sales less cost of the goods or services equals profits. If the subject regulation affects income/gross sales, then it follows that it affects profits and vice versa. The shift in the use of terms, i.e., from “profits” to “gross sales,” cannot erase or conceal the materiality of profits or losses in determining the validity of the subject regulation in this case.

Again, as previously discussed, the 20% discount does not automatically result in a 20% reduction in profits, or, to align it with the term used by the Dissent, the 20% discount does not mean that a 20% reduction in gross sales necessarily results. Because (1) the profit margin of a product is not necessarily less than 20%, (2) not all customers of a business establishment are senior citizens, and (3) the establishment may revise its pricing strategy, such reduction in profits or income/gross sales may be prevented or, in the alternative, mitigated so that the business establishment continues to operate profitably. Thus, even if we gratuitously assume that some degree of reduction in profits or income/gross sales occurs because of the 20% discount, it does not follow that the regulation is unreasonable, oppressive or confiscatory because the business establishment may make the necessary adjustments to continue to operate profitably. No evidence was presented by petitioners to show otherwise. In fact, no evidence was presented by petitioners at all.

Justice Leonen, in his *Concurring and Dissenting Opinion*, characterizes “profits” (or income/gross sales) as an inchoate right. Another way to view it, as stated by Justice Velasco in his Concurring Opinion, is that the business establishment merely has a right to profits. The Constitution adverts to it as the right of an enterprise to a reasonable return on investment.¹¹⁵ Undeniably, this right, like any other right, may be regulated under the police power of the State to achieve important governmental objectives like protecting the interests and improving the welfare of senior citizens.

It should be noted though that potential profits or income/gross sales are relevant in police power and eminent domain analyses because they may, in appropriate cases, serve as an indicia when a regulation has gone “too far” as to amount to a “taking” under the power of eminent domain. When the deprivation or reduction of profits or income/gross sales is shown to be unreasonable, oppressive or confiscatory, then the challenged governmental regulation may be nullified for being a “taking” under the power of eminent domain. In such a case, it is not profits or income/gross sales which are actually taken and appropriated for public use. Rather, when the regulation causes an establishment to incur losses in an unreasonable, oppressive or confiscatory manner, what is actually taken is capital and the right of the business establishment to a reasonable return on investment. If the business losses are not halted because of the continued operation of the regulation, this eventually leads to the destruction of the business and the total loss of the capital invested therein. But, again, petitioners in this case failed to prove that the subject regulation is unreasonable, oppressive or confiscatory.

¹¹⁵ Article XIII, Section 3.

V.

The Dissent further argues that we erroneously used price and rate of return on investment control laws to justify the senior citizen discount law. According to the Dissent, only profits from industries imbued with public interest may be regulated because this is a condition of their franchises. Profits of establishments without franchises cannot be regulated permanently because there is no law regulating their profits. The Dissent concludes that the permanent reduction of total revenues or gross sales of business establishments without franchises is a taking of private property under the power of eminent domain.

In making this argument, it is unfortunate that the Dissent quotes only a portion of the *ponencia* –

The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures. These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate of return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. x x x¹¹⁶

The above paragraph, in full, states –

The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures. These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate of return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. **Nonetheless, to the degree material to the resolution of this case, the 20% discount may be properly viewed as belonging to the category of price regulatory measures which affects the profitability of establishments subjected thereto.** (Emphasis supplied)

¹¹⁶ Dissenting Opinion, p. 12.

The point of this paragraph is to simply show that the State has, in the past, regulated prices and profits of business establishments. In other words, this type of regulatory measures is traditionally recognized as police power measures so that the senior citizen discount may be considered as a police power measure as well. What is more, the substantial distinctions between price and rate of return on investment control laws vis-à-vis the senior citizen discount law provide *greater reason* to uphold the validity of the senior citizen discount law. As previously discussed, the ability to adjust prices allows the establishment subject to the senior citizen discount to prevent or mitigate any reduction of profits or income/gross sales arising from the giving of the discount. In contrast, establishments subject to price and rate of return on investment control laws cannot adjust prices accordingly.

Certainly, there is no intention to say that price and rate of return on investment control laws are the justification for the senior citizen discount law. Not at all. The justification for the senior citizen discount law is the plenary powers of Congress. The legislative power to regulate business establishments is broad and covers a wide array of areas and subjects. It is well within Congress' legislative powers to regulate the profits or income/gross sales of industries and enterprises, *even those without franchises*. For what are franchises but mere legislative enactments?

There is nothing in the Constitution that prohibits Congress from regulating the profits or income/gross sales of industries and enterprises without franchises. On the contrary, the social justice provisions of the Constitution enjoin the State to regulate the "acquisition, ownership, use, and disposition" of property and its increments.¹¹⁷ This may cover the regulation of profits or income/gross sales of all businesses, without qualification, to attain the objective of diffusing wealth in order to protect and enhance the right of all the people to human dignity.¹¹⁸ Thus, under the social justice policy of the Constitution, business establishments may be compelled to contribute to uplifting the plight of vulnerable or marginalized groups in our society provided that the regulation is not arbitrary, oppressive or confiscatory, or is not in breach of some specific constitutional limitation.

When the Dissent, therefore, states that the "profits of private establishments which are non-franchisees cannot be regulated **permanently**, and there is no such law regulating their profits permanently,"¹¹⁹ it is assuming what it ought to prove. First, there *are* laws which, in effect, permanently regulate profits

¹¹⁷ Article XIII, Section 1 of the Constitution states:

The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

¹¹⁸ Id.

¹¹⁹ Dissenting Opinion, p. 13.

or income/gross sales of establishments without franchises, and RA 9257 is one such law. And, second, Congress *can* regulate such profits or income/gross sales because, as previously noted, there is nothing in the Constitution to prevent it from doing so. Here, again, it must be emphasized that petitioners failed to present any proof to show that the effects of the assailed law on their operations has been unreasonable, oppressive or confiscatory.

The *permanent* regulation of profits or income/gross sales of business establishments, even those without franchises, is not as uncommon as the Dissent depicts it to be.

For instance, the minimum wage law allows the State to set the minimum wage of employees in a given region or geographical area. Because of the added labor costs arising from the minimum wage, a permanent reduction of profits or income/gross sales would result, assuming that the employer does not increase the prices of his goods or services. To illustrate, suppose it costs a company ₱5.00 to produce a product and it sells the same at ₱10.00 with a 50% profit margin. Later, the State increases the minimum wage. As a result, the company incurs greater labor costs so that it now costs ₱7.00 to produce the same product. The profit per product of the company would be reduced to ₱3.00 with a profit margin of 30%. The net effect would be the same as in the earlier example of granting a 20% senior citizen discount. As can be seen, the minimum wage law could, likewise, lead to a permanent reduction of profits. Does this mean that the minimum wage law should, likewise, be declared unconstitutional on the mere plea that it results in a permanent reduction of profits? Taking it a step further, suppose the company decides to increase the price of its product in order to offset the effects of the increase in labor cost; does this mean that the minimum wage law, following the reasoning of the Dissent, is unconstitutional because the consuming public is effectively made to subsidize the wage of a group of laborers, *i.e.*, minimum wage earners?

The same reasoning can be adopted relative to the examples cited by the Dissent which, according to it, are valid police power regulations. Article 157 of the Labor Code, Sections 19 and 18 of the Social Security Law, and Section 7 of the Pag-IBIG Fund Law would effectively increase the labor cost of a business establishment. This would, in turn, be integrated as part of the cost of its goods or services. Again, if the establishment does not increase its prices, the net effect would be a permanent reduction in its profits or income/gross sales. Following the reasoning of the Dissent that “any form of **permanent** taking of private property (including profits or income/gross sales)¹²⁰ is an exercise of eminent domain that requires the State to pay just compensation,”¹²¹ then these statutory provisions would, likewise, have to be declared unconstitutional. It does not matter that these

¹²⁰ Parenthetical comment supplied.

¹²¹ Dissenting Opinion, p. 14.

benefits are deemed part of the employees' legislated wages because the net effect is the same, that is, it leads to higher labor costs and a permanent reduction in the profits or income/gross sales of the business establishments.¹²²

The point then is this – most, if not all, regulatory measures imposed by the State on business establishments impact, at some level, the latter's prices and/or profits or income/gross sales.¹²³ If the Court were to sustain the Dissent's theory, then a wholesale nullification of such measures would inevitably result. The police power of the State and the social justice provisions of the Constitution would, thus, be rendered nugatory.

There is nothing sacrosanct about profits or income/gross sales. This, we made clear in *Carlos Superdrug Corporation*:¹²⁴

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

X X X X

¹²² According to the Dissent, these statutorily mandated employee benefits are valid police power measures because the employer is deemed fully compensated therefor as they form part of the employee's legislated wage.

The Dissent confuses police power with eminent domain.

In police power, no compensation is required, and it is not necessary, as the Dissent mistakenly assumes, to show that the employer is deemed fully compensated in order for the statutorily mandated benefits to be a valid exercise of police power. It is immaterial whether the employer is deemed fully compensated because the justification for these statutorily mandated benefits is the overriding State interest to protect and uphold the welfare of employees. This State interest is principally rooted in the historical abuses suffered by employees when employers solely determined the terms and conditions of employment. Further, the direct or incidental benefit derived by the employer (*i.e.*, healthier work environment which presumably translates to more productive employees) from these statutorily mandated benefits is not a requirement to make them valid police power measures. Again, it is the paramount State interest in protecting the welfare of employees which justifies these measures as valid exercises of police power subject, of course, to the test of reasonableness as to the means adopted to achieve such legitimate ends.

That the assailed law benefits senior citizens and not employees of a business establishment makes no material difference because, precisely, police power is employed to protect and uphold the welfare of marginalized and vulnerable groups in our society. Police power would be a meaningless State attribute if an individual, or a business establishment for that matter, can only be compelled to accede to State regulations provided he (or it) is directly or incidentally benefited thereby. Precisely in instances when the individual resists or opposes a regulation because it burdens him or her that the State exercises its police power in order to uphold the common good. Many laudable existing police power measures would have to be invalidated if, as a condition for their validity, the individual subjected thereto should be directly or incidentally benefited by such measures.

¹²³ See De Leon and De Leon, Jr., *Philippine Constitutional Law: Principles and Cases Vol. 1*, at 671-673 (2012), for a list of police power measures upheld by this Court. A good number of these measures impact, directly or indirectly, the profitability of business establishments yet the same were upheld by the Court because they were not shown to be unreasonable, oppressive or confiscatory.

¹²⁴ *Supra* note 14.

The Court is not oblivious of the retail side of the pharmaceutical industry and the competitive pricing component of the business. While the Constitution protects property rights, petitioners must accept the realities of business and the State, in the exercise of police power, can intervene in the operations of a business which may result in an impairment of property rights in the process.

Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good.

Undeniably, the success of the senior citizens program rests largely on the support imparted by petitioners and the other private establishments concerned. This being the case, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Without sufficient proof that Section 4(a) of R.A. No. 9257 is arbitrary, and that the continued implementation of the same would be unconscionably detrimental to petitioners, the Court will refrain from quashing a legislative act.¹²⁵

In conclusion, we maintain that the correct rule in determining whether the subject regulatory measure has amounted to a “taking” under the power of eminent domain is the one laid down in *Alalayan v. National Power Corporation*¹²⁶ and followed in *Carlos Superdrug Corporation*¹²⁷ consistent with long standing principles in police power and eminent domain analysis. Thus, the deprivation or reduction of profits or income/gross sales must be clearly shown to be unreasonable, oppressive or confiscatory. Under the specific circumstances of this case, such determination can only be made upon the presentation of competent proof which petitioners failed to do. A law, which has been in operation for many years and promotes the welfare of a group accorded special concern by the Constitution, cannot and should not be summarily invalidated on a mere allegation that it reduces the profits or income/gross sales of business establishments.

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

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

¹²⁵ Id. at 132-135.

¹²⁶ Supra note 83.

¹²⁷ Supra note 14.

WE CONCUR:

[Signature]
MARIA LOURDES P. A. SERENO
 Chief Justice

The Dissenting Opinion
[Signature]
ANTONIO T. CARPIO
 Associate Justice

(Pls. see Concurring Opinion)
[Signature]
PRESBITERO J. VELASCO, JR.
 Associate Justice

I certify that J. De Castro
left her vote concurring not
provincia of J. Del Castillo
[Signature]
TERESITA J. LEONARDO-DE CASTRO
 Associate Justice

No Part
[Signature]
 (No part)
ARTURO D. BRION
 Associate Justice

I certify that J. Peralta
left his vote concurring not
provincia of J. Del Castillo
[Signature]
DIOSDADO M. PERALTA
 Associate Justice

With concurring opinion
[Signature]
LUCAS P. BERSAMIN
 Associate Justice

[Signature]
ROBERTO A. ABAD
 Associate Justice

[Signature]
MARTIN S. VILLARAMA, JR.
 Associate Justice

[Signature]
JOSE PORTUGAL PEREZ
 Associate Justice

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JOSE CATRAL MENDOZA
 Associate Justice

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BIENVENIDO L. REYES
 Associate Justice

[Signature]
ESTELA M. BERLAS-BERNABE
 Associate Justice

[Handwritten mark]

Separate concurring opinion


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice

