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THIRD DIVISION

[G.R. NO. 148083, July 21, 2006]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BICOLANDIA DRUG CORPORATION (FORMERLY KNOWN AS ELMAS DRUG CO.), RESPONDENT.

D E C I S I O N

VELASCO, JR., J.:

In cases of conflict between the law and the rules and regulations implementing the law, the law shall always prevail. Should Revenue Regulations deviate from the law they seek to implement, they will be struck down.

The Facts

In 1992, 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," granted senior citizens several privileges, one of which was obtaining a 20 percent discount from all establishments relative to the use of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and purchase of medicines anywhere in the country.[1] The law also provided that the private establishments giving the discount to senior citizens may claim the cost as tax credit.[2] In compliance with the law, the Bureau of Internal Revenue issued Revenue Regulations No. 2-94, which defined "tax credit" as follows:

> **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, 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.[3]

In 1995, respondent Bicolandia Drug Corporation, a corporation engaged in the business of retailing pharmaceutical products under the business style of "Mercury Drug," granted the 20 percent sales discount to qualified senior citizens purchasing their medicines in compliance with R.A. No. 7432.[4] Respondent treated this discount as a deduction from its

gross income in compliance with Revenue Regulations No. 2-94, which implemented R.A. No. 7432.[5] On April 15, 1996, respondent filed its 1995 Corporate Annual Income Tax Return declaring a net loss position with nil income tax liability.[6]

On December 27, 1996, respondent filed a claim for tax refund or credit in the amount of PhP 259,659.00 with the Appellate Division of the Bureau of Internal Revenue-because its net losses for the year 1995 prevented it from benefiting from the treatment of sales discounts as a deduction from gross sales during the said taxable year.[7] It alleged that the petitioner Commissioner of Internal Revenue erred in treating the 20 percent sales discount given to senior citizens as a deduction from its gross income for income tax purposes or other percentage tax purposes rather than as a tax credit.[8]

On April 6, 1998, respondent appealed to the Court of Tax Appeals in order to toll the running of two (2)-year prescriptive period to file a claim for refund pursuant to Section 230 of the Tax Code then.[9] Respondent argued that since Section 4 of R.A. No. 7432 provided that discounts granted to senior citizens may be claimed as tax credit, Section 2(i) of Revenue Regulations No. 2-94, which referred to the 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,"[10] is illegal, void and without effect for being inconsistent with the statute it implements.

Petitioner maintained that Revenue Regulations No. 2-94 is valid since the law tasked the Department of Finance, among other government offices, with the issuance of the necessary rules and regulations to carry out the objectives of the law.[11]

Ruling of the Court of Tax Appeals

The Court of Tax Appeals declared that the provisions of R.A. No. 7432 would prevail over Section 2(i) of Revenue Regulations No. 2-94, whose definition of "tax credit" deviated from the intendment of the law; and as a result, partially granted the respondent's claim for a refund. After examining the evidence on record, the Court of Tax Appeals reduced the claimed 20 percent sales discount, thus reducing the refund to be given. It ruled that "Respondent is hereby **ORDERED** to **REFUND** in favor of Petitioner the amount of P236,321.52, representing overpaid income tax for the year 1995."[12]

Ruling of the Court of Appeals

On appeal, the Court of Appeals modified the decision of the Court of Tax Appeals as the law provided for a tax credit, not a tax refund. The fallo of the Decision states:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED and the Decision of the Court of Tax Appeals in C.T.A. Case No. 5599 is hereby

> MODIFIED in the sense that the award of tax refund is ANNULLED and SET ASIDE. Instead, the petitioner is hereby ORDERED to issue a tax credit certificate in favor of the respondent in the amount of P 236,321.52.
>
> No pronouncement as to costs.[13]

The Issue

Petitioner now argues that the Court of Appeals erred in holding that the 20 percent sales discount granted to qualified senior citizens by the respondent pursuant to R.A. No. 7432 may be claimed as a tax credit, instead of a deduction from gross income or gross sales.[14]

The Court's Ruling

The petition is not meritorious.

Redefining "Tax Credit" as "Tax Deduction"

The problem stems from the issuance of Revenue Regulations No. 2-94, which was supposed to implement R.A. No. 7432, and the radical departure it made when it defined the "tax credit" that would be granted to establishments that give 20 percent discount to senior citizens. Under Revenue Regulations No. 2-94, the tax credit is "the amount representing the 20 percent 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."[15] It equated "tax credit" with "tax deduction," contrary to the definition in Black's Law Dictionary, which defined tax credit as:

> An amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability. A tax credit reduces the taxpayer's liability x x x, compared to a deduction which reduces taxable income upon which the tax liability is calculated. A credit differs from deduction to the extent that the former is subtracted from the tax while the latter is subtracted from income before the tax is computed.[16]

The interpretation of an administrative government agency, which is tasked to implement the statute, is accorded great respect and ordinarily controls the construction of the courts.[17] Be that as it may, the definition laid down in the questioned Revenue Regulations can still be subjected to scrutiny. Courts will not hesitate to set aside an executive interpretation when it is clearly erroneous. There is no need for interpretation when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily

understandable to an ordinary reader.[18] The definition of the term "tax credit" is plain and clear, and the attempt of Revenue Regulations No. 2-94 to define it differently is the root of the conflict.

Tax Credit is not Tax Refund

Petitioner argues that the tax credit is in the nature of a tax refund and should be treated as a return for tax payments erroneously or excessively assessed against a taxpayer, in line with Section 204(c) of Republic Act No. 8424, or the National Internal Revenue Code of 1997. Petitioner claims that there should first be payment of the tax before the tax credit can be claimed. However, in the National Internal Revenue Code, we see at least one instance where this is not the case. Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax.[19] It speaks of a tax credit for tax due, so payment of the tax has not yet been made in that particular example.

The Court of Appeals expressly recognized the differences between a "tax credit" and a "tax refund," and stated that the same are not synonymous with each other, which is why it modified the ruling of the Court of Tax Appeals.

Revenue Regulations No. 2-94 vs. R.A. No. 7432 and
R.A. No. 7432 vs. the National Internal Revenue Code

Petitioner contends that since R.A. No. 7432 used the word "may," the availability of the tax credit to private establishments is only permissive and not absolute or mandatory. From that starting point, petitioner further argues that the definition of the term "tax credit" in Revenue Regulations No. 2-94 was validly issued under the authority granted by the law to the Department of Finance to formulate the needed guidelines. It further explained that Revenue Regulations No. 2-94 can be harmonized with R.A No. 7432, such that the definition of the term "tax credit" in Revenue Regulations No. 2-94 is controlling. It claims that to do otherwise would result in Section 4(a) of R.A. No. 7432 impliedly repealing Section 204 (c) of the National Internal Revenue Code.

These arguments must also fail.

Revenue Regulations No. 2-94 is still subordinate to R.A. No. 7432, and in cases of conflict, the implementing rule will not prevail over the law it seeks to implement. While seemingly conflicting laws must be harmonized as far as practicable, in this particular case, the conflict cannot be resolved in the manner the petitioner wishes. There is a great divide separating the idea of "tax credit" and "tax deduction," as seen in the definition in Black's Law Dictionary.

The claimed absurdity of Section 4(a) of R.A. No. 7432 impliedly repealing Section 204(c)

of the National Internal Revenue Code could only come about if it is accepted that a tax credit is akin to a tax refund wherein payment of taxes must be made in order for it to be claimed. But as shown in Section 112(a) of the National Internal Revenue Code, it is not always necessary for payment to be made for a tax credit to be available.

Looking into R.A. No. 7432

Finally, petitioner argues that should private establishments, which count respondent in their number, be allowed to claim tax credits for discounts given to senior citizens, they would be earning and not just be reimbursed for the discounts given.

It cannot be denied that R.A. No. 7432 has a laudable goal. Moreover, it cannot be argued that it was the intent of lawmakers for private establishments to be the primary beneficiaries of the law. However, while the purpose of the law to benefit senior citizens is praiseworthy, the concerns of the affected private establishments were also considered by the lawmakers. As in other cases wherein private property is taken by the State for public use, there must be just compensation. In this particular case, it took the form of the tax credit granted to private establishments, purposely chosen by the lawmakers. In the similar case of *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[20] scrutinizing the deliberations of the Bicameral Conference Committee Meeting on Social Justice on February 5, 1992 which finalized R.A. No. 7432, the discussions of the lawmakers clearly showed the intent that the cost of the 20 percent discount may be claimed by the private establishments as a tax credit. An excerpt from the deliberations is as follows:

SEN. ANGARA.	In the case of private hospitals they got the grant of 15% discount, provided that, the private hospitals can claim the expense as a tax credit
REP. AQUINO.	Yah could be allowed as deductions in the preparation of (inaudible) income
SEN. ANGARA.	I-tax *credit na lang natin para walang* cash-out?
REP. AQUINO.	*Oo*, tax credit. *Tama*. Okay. Hospitals *ba o lahat* ng establishments *na* covered.
THE CHAIRMAN.	*Sa kuwan lang yon, as private hospitals lang*.

REP. AQUINO.	*Ano ba yung establishments na* covered*?*
SEN. ANGARA.	Restaurant, lodging houses, recreation centers.
REP. AQUINO.	All establishments covered *siguro*?
SEN. ANGARA.	From all establishments. *Alisin na natin `yung kuwan kung ganon*. Can we go back to Section 4 *ha?*
REP. AQUINO.	Oho.
SEN. ANGARA.	Letter A. To capture that thought, we'll say the grant of 20% discount from all establishments et cetera, et cetera, provided that said establishments may claim the cost as a tax credit. *Ganon ba `yon*?
REP. AQUINO.	Yah.
SEN. ANGARA.	*Dahil kung* government, they don't need to claim it.
THE CHAIRMAN.	Tax credit.
SEN. ANGARA.	As a tax credit [rather] than a kuwan - deduction, Okay.[21]

It is clear that the lawmakers intended the grant of a tax credit to complying private establishments like the respondent.

If the private establishments appear to benefit more from the tax credit than originally intended, it is not for petitioner to say that they shouldn't. The tax credit may actually have provided greater incentive for the private establishments to comply with R.A. No. 7432, or quicker relief from the cut into profits of these businesses.

Revenue Regulations No. 2-94 Null and Void

From the above discussion, it must be concluded that Revenue Regulations No. 2-94 is null and void for failing to conform to the law it sought to implement. In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the

basic law.[22]

Revenue Regulations No. 2-94 being null and void, it must be ruled then that under R.A. No. 7432, which was effective at the time, respondent is entitled to its claim of a tax credit, and the ruling of the Court of Appeals must be affirmed.

But even as this particular case is decided in this manner, it must be noted that the concerns of the petitioner regarding tax credits granted to private establishments giving discounts to senior citizens have been addressed. R.A. No. 7432 has been amended by Republic Act No. 9257, the "Expanded Senior Citizens Act of 2003." In this, the term "tax credit" is no longer used. The 20 percent discount granted by hotels and similar lodging establishments, restaurants and recreation centers, and in the purchase of medicines in all establishments for the exclusive use and enjoyment of senior citizens is treated in the following manner:

> 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.[23]

This time around, there is no conflict between the law and the implementing Revenue Regulations. Under Revenue Regulations No. 4-2006, "(o)nly 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."[24] Under the new law, there is no tax credit to speak of, only deductions.

Petitioner can find some vindication in the amendment made to R.A. No. 7432 by R.A. No. 9257, which may be more in consonance with the principles of taxation, but as it was R.A. No. 7432 in force at the time this case arose, this law controls the result in this particular case, for which reason the petition must fail.

This case should remind all heads of executive agencies which are given the power to promulgate rules and regulations, that they assume the roles of lawmakers. It is well-settled that a regulation should not conflict with the law it implements. Thus, those drafting the regulations should study well the laws their rules will implement, even to the extent of reviewing the minutes of the deliberations of Congress about its intent when it drafted the law. They may also consult the Secretary of Justice or the Solicitor General for their opinions on the drafted rules. Administrative rules, regulations and orders have the efficacy and force of law so long as they do not contravene any statute or the Constitution.[25] It is

then the duty of the agencies to ensure that their rules do not deviate from or amend acts of Congress, for their regulations are always subordinate to law.

WHEREFORE, the Petition is hereby **DENIED**. The assailed Decision of the Court of Appeals is **AFFIRMED**. There is no pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, and *Tinga JJ.,* concur.
Carpio, J., on offical leave.

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[1] Republic Act No. 7432 (1992), Sec. 4 (a).

[2] Id.

[3] Revenue Regulations No. 2-94 (1993), Sec. 1(i).

[4] *Rollo*, p. 33.

[5] Id.

[6] Id. at 34.

[7] Id.

[8] Id.

[9] Id.

[10] Section 2 (i) Revenue Regulations 2-94, issued August 23, 1993.

[11] *Rollo,* p. 34.

[12] Id. at 46.

[13] Id. at 36. (Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justice

Conrado M. Vasquez, Jr. and Associate Justice Eliezer R. Delos Santos).

[14] Id. at 21.

[15] Revenue Regulations No. 2-94 (1994), Section 2.

[16] BLACK'S LAW DICTIONARY, Centennial Edition, p. 1461 (1991).

[17] *Melendres, Jr. v. Commission on Elections,* G.R. No. 129958, November 25, 1999, 319 SCRA 262, 275.

[18] *Republic v. Sandiganbayan,* G.R. No. 119292, July 31,1998, 293 SCRA 440, 454.

[19] Republic Act No. 8424 (1998), Sec. 112 (A).

[20] G.R. No. 159647, April 15, 2005, 456 SCRA 414.

[21] Deliberations of the Bicameral Conference Committee Meeting on Social Justice, February 5, 1992, pp. 22-24.

[22] *People v. Maceren,* No. L-32166, October 8, 1977, 79 SCRA 450, 460.

[23] Republic Act No. 9257 (2004), Sec. 4.

[24] Revenue Regulations No. 4-2006 (2005), Sec. 8(3).

[25] *Cruz v. Del Rosario,* G.R. No. L-17440, December 26, 1963, 9 SCRA 755, 758.
