571 Phil. 95

# SECOND DIVISION

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

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

## D E C I S I O N

**VELASCO JR., J.:**

This case involves Republic Act No. (RA) 7432, otherwise known as *An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes*, passed on April 23, 1992. It granted, among others, a 20% sales discount on purchases of medicines by qualified senior citizens.

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

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

> x x x x
>
> i. Tax Credit – refers to the amount representing the 20% discount granted to a qualified senior citizen by all establishments relative to their utilization of transportation services, hotels and similar lodging establishments, restaurants, drugstores, recreation centers, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, which **discount shall be deducted by the said establishments from their gross income for income tax purposes** and from their gross sales for value-added tax or other percentage tax purposes. (Emphasis supplied.)

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

Sec. 4(a) of RA 7432 states:

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

> a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and purchase of medicines anywhere in the country: Provided, That **private establishments may claim the cost as tax credit**; (Emphasis supplied.)

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

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

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

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

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

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

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

On July 11, 2000, the CTA denied M.E.'s motion for reconsideration which contained a prayer to present additional evidence consisting of duplicate copies of the cash

slips allegedly not submitted to M.E. by its independent auditor.[3] In refuting M.E.'s contention that the tax credit should be based on the actual discount and not on the acquisition cost of the medicines, the CTA applied the Court of Appeals (CA) ruling in *CIR v. Elmas Drug Corporation,*[4] where the term "cost of the discount" was interpreted to mean only the direct acquisition cost, excluding administrative and other incremental costs.

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

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

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

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

I.

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

II.

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

III.

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

**Our Ruling**

The petition is partly meritorious.

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

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

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

M.E. fails to persuade. The determination of the exact amount M.E. claims as the 20% sales discount it granted to the senior citizens calls for an evaluation of factual matters. The unyielding rule is that the findings of fact of the trial court, particularly when affirmed by the CA, are binding upon this Court,[11] save when the lower courts had overlooked, misunderstood, or misinterpreted certain facts or circumstances of weight, which, if properly considered, would affect the result of the case and warrant a reversal of the decision. The instant case does not fall under the exception; hence, we do not find any justification to review all over again the evidence presented before the CTA, and the factual conclusions deduced therefrom.

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