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

G.R. NO. 142299. June 22, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review[1] by Bicolandia Drug Corporation, formerly known as Elmas Drug Corporation, seeking the nullification of the Decision and Resolution of the Court of Appeals, dated October 19, 1999 and February 18, 2000, respectively, in CA-G.R SP No. 49946 entitled "Commissioner of Internal Revenue v. Elmas Drug Corporation."

The controversy primarily involves the proper interpretation of the term "cost" in Section 4 of Republic Act (R.A.) 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."

The facts[2] of the case are as follows:

Petitioner Bicolandia Drug Corporation is a domestic corporation principally engaged in the retail of pharmaceutical products. Petitioner has a drugstore located in Naga City under the name and business style of "Mercury Drug."

Pursuant to the provisions of R.A. No. 7432, entitled "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes," also known as the "Senior Citizens Act," and Revenue Regulations No. 2-94, petitioner granted to qualified senior citizens a 20% sales discount on their purchase of medicines covering the period from July 19, 1993 to December 31, 1994.

When petitioner filed its corresponding corporate annual income tax returns for taxable years 1993 and 1994, it claimed as a deduction from its gross income the respective amounts of P80,330 and P515,000 representing the 20% sales discount it granted to senior citizens.

On March 28, 1995, however, alleging error in the computation and claiming that the aforementioned 20% sales discount should have been treated as a tax credit pursuant to R.A. No. 7432 instead of a deduction from gross income, petitioner filed a claim for refund or credit of overpaid income tax for 1993 and 1994, amounting to P52,215 and P334,750, respectively. Petitioner computed the overpayment as follows:

> Income tax benefit of tax credit 100%
>
> Income tax benefit of tax deduction 35%
>
> Differential 65%
>
> For 1993

20% discount granted in 1993 P80,330

Multiply by 65% x 65%

Overpaid corporate income tax P52,215

For 1994

20% discount granted in 1993 P515,000

Multiply by 65% x 65%

Overpaid corporate income tax P334,750

On December 29, 1995, petitioner filed a Petition for Review with the Court of Tax Appeals (CTA) in order to toll the running of the two-year prescriptive period for claiming for a tax refund under Section 230, now Section 229, of the Tax Code.

It contended that Section 4 of R.A. No. 7432 provides in clear and unequivocal language that discounts granted to senior citizens may be claimed as a tax credit. Revenue Regulations No. 2-94, therefore, which is merely an implementing regulation cannot modify, alter or depart from the clear mandate of Section 4 of R.A. No. 7432, and, thus, is null and void for being inconsistent with the very statute it seeks to implement.

The Commissioner of Internal Revenue, on the other hand, maintained that the aforesaid section providing for a 20% sales discount to senior citizens is a misnomer as it runs counter to the solemn duty of the government to collect taxes. The Commissioner likewise pointed out that the provision in question employs the word "may," thereby implying that the availability of the remedy of tax credit is not absolute and mandatory and it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if he so chooses. The Commissioner further stated that in statutory construction, the contemporaneous construction of a statute by executive officers of the government whose duty is to execute it is entitled to great respect and should ordinarily control in its interpretation.

Thus, addressing the matter of the proper construction of Section 4(a) of R.A. No. 7432 regarding the treatment of the 20% sales discount given to senior citizens on their medicine purchases, the CTA ruled on the issue of whether or not the discount should be deductible from gross sales of value-added tax or other percentage tax purposes as prescribed under Revenue Regulations No. 2-94 or as a tax credit deductible from the tax due.

In its Decision, dated August 27, 1998, the CTA declared that:

"x x x

Revenue Regulations No. 2-94 gave a new meaning to the phrase "tax credit," interpreting it to mean that the 20% discount granted to qualified senior citizens is an amount deductible from the establishment's gross sales, which is completely contradictory to the literal or widely accepted meaning of the said phrase, as an amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability (Black's Law Dictionary).

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

Having settled the legal issue involved in the case at bar, We are now tasked to resolve the factual issues of whether or not petitioner is entitled to the claim for refund of its overpaid income taxes for the years 1993 and 1994 based on the evidence at hand.

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Contrary to the findings of the independent CPA, aside from the unverifiable 20% sales discounts in the amount of P18,653.70 (Exh. R-3), the Court noted some material discrepancies. Not all the details listed in the 1994 "Summary of Sales and Discounts Given to Senior Citizens" correspond with the cash slips presented. There are various sales discounts granted which were not properly computed and there were also some cash slips left unsigned by the buyers.

x x x

After a careful scrutiny of the documents presented, the Court, allows only the amount of sales discounts duly supported by the pre-marked cash slips x x x.

Hence, only the above amounts which are properly documented can be used as base in computing for the cost of 20% discount as tax credit. The overpaid income tax therefore is computed as follows: [3]

For 1993

Net Sales
P31,080,508.00

Add: 20% Discount to Senior Citizens
80,330.00

Gross Sales
P31,160,838.00

Less: Cost of Sales

Merchandise Inventory, beg. P 4,226,588.00

Add Purchases 29,234,361.00

Total Goods available for Sale P 33,460,947.00

Less: Merchandise Inventory, End P 4,875.944.00 P28,585,003.00

Gross Income
P 2,575,835.00

Less: Operating Expenses
1,706,491.00

Net Operating Income
P 869,344.00

Add: Miscellaneous Income
72,680.00

Net Income
P 942,024.00

Less: Interest Income Subject to Final Tax
21,140.00

Net Taxable Income
P 920,884.00

Tax Due (P920,884 x 35%)
P 322,309.40

Less: 1) Tax Credit (Cost of 20% Discount)

[(28,585,003.00/31,160,838.00)

x 80,330.34] P 73,690.03

2) Income Tax Payment for the Year 294,194.00 P 367,884.03

AMOUNT REFUNDABLE
P 45,574.63

For 1994

Net Sales
P29,904,734.00

Add: 20% Discount to Senior Citizens
515,000.00

Gross Sales
P30,419,734.00

Less: Cost of Sales

Merchandise Inventory, beg. P 4,875,944.00

Add Purchases 28,138,103.00

Total Goods available for Sales P 33,014,047.00

Less: Merchandise Inventory, End 5,036.117.00 27,977,930.00

Gross Income
P 2,441,804.00

Less: Operating Expenses
1,880,153.00

Net Operating Income
P 561,651.00

Add: Miscellaneous Income
82,207.00

Net Income
P 643,858.00

Less: Interest Income Subject to Final Tax
30,618.00

Net Taxable Income
P 613,240.00

Tax Due (613,240 x 35%)
P 214,634.00

Less: 1) Tax Credit (Cost of 20% Discount)

[(28,585,003.00/31,160,838.00) x

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80,330.34] P316,156.48

2) Income Tax Payment for the Year 34,384.00 P 350,540.48

AMOUNT REFUNDABLE
P 135,906.48

WHEREFORE, in view of all the foregoing, petitioner's claim for refund is hereby partially GRANTED. Respondent is hereby ORDERED to REFUND, or in the alternative, to ISSUE a tax credit certificate in favor of the petitioner the amounts of P45,574.63 and P135,906.48, representing overpaid income tax for the years 1993 and 1994, respectively.

SO ORDERED.[4]

Both the Commissioner and petitioner moved for a reconsideration of the above decision. Petitioner, in its Motion for Partial Reconsideration, claimed that the "cost" that private establishments may claim as tax credit under Section 4 of R.A. No. 7432 should be construed to mean the full amount of the 20% sales discount granted to senior citizens instead of the formula --[Tax Credit = Cost of Sales/Gross Sales x 20% discount] - used by the CTA in computing for the amount of the tax credit. In view of this, petitioner prayed for the refund of the amount of income tax it allegedly overpaid in the aggregate amount of P45,574.63 and P135,906.48, respectively, for the taxable years 1993 and 1994 as a result of treating the sales discount of 20% as a tax deduction rather than as a tax credit.

The Commissioner, on the other hand, moved for a re-computation of petitioner's tax liability averring that the sales discount of 20% should be deducted from gross income to arrive at the taxable income. Such discount cannot be considered a tax credit because the latter, being in the nature of a tax refund, is treated as a return of tax payments erroneously or excessively assessed and collected as provided under Section 204(3) of the Tax Code, to wit:

(3) x x x No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty.

In its Resolution, dated December 7, 1998, the CTA modified its earlier decision, thus:

ACCORDINGLY, the petitioner's Motion for Partial Reconsideration is hereby GRANTED. Respondent is hereby ORDERED to ISSUE tax credit certificates in favor of petitioner [in] the amounts of P45,574.63 and P135,906.48 representing overpaid income tax for the years 1993 and 1994, as prayed for in its motion. On the other hand, the Respondent's Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.[5]

Consequently, the Commissioner filed a petition for review with the Court of Appeals asking for the reversal of the CTA Decision and Resolution.

The Court of Appeals rendered its assailed Decision on October 19, 1999, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, the petition is hereby GRANTED IN PART. The resolution issued by the Court of Tax Appeals dated December [7], 1998 is SET ASIDE and the Decision rendered by the latter is AFFIRMED IN TOTO.

No costs.

SO ORDERED.[6]

Hence, this petition positing that:

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> THE COURT OF APPEALS ERRED IN RULING THAT IN COMPUTING THE TAX CREDIT TO BE ALLOWED PETITIONER FOR DISCOUNTS GRANTED TO SENIOR CITIZENS ON THEIR PURCHASE OF MEDICINES, THE ACQUISITION COST RATHER THAN THE ACTUAL DISCOUNT GRANTED TO SENIOR CITIZENS SHOULD BE THE BASIS.[7]

Otherwise stated, the matter to be determined is the amount of tax credit that may be claimed by a taxable entity which grants a 20% sales discount to qualified senior citizens on their purchase of medicines pursuant to Section 4(a) of R.A. No. 7432 which states:

> Sec. 4. Privileges for the Senior citizens. - The senior citizens shall be entitled to the following:
>
> a) the grant of twenty percent (20%) discount from all establishments relative to 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[8] as tax credit.

The term "cost" in the above provision refers to the amount of the 20% discount extended by a private establishment to senior citizens in their purchase of medicines. This amount shall be applied as a tax credit, and may be deducted from the tax liability of the entity concerned. If there is no current tax due or the establishment reports a net loss for the period, the credit may be carried over to the succeeding taxable year. This is in line with the interpretation of this Court in Commissioner of Internal Revenue v. Central Luzon Drug Corporation[9] wherein it affirmed that R.A. No. 7432 allows private establishments to claim as tax credit the amount of discounts they grant to senior citizens.

The Court notes that petitioner, while praying for the reinstatement of the CTA Resolution, dated December 7, 1998, directing the issuance of tax certificates in favor of petitioner for the respective amounts of P45,574.63 and P135,906.48 representing overpaid income tax for 1993 and 1994, asks for the refund of the same.[10]

In this regard, petitioner's claim for refund must be denied. The law expressly provides that the discount given to senior citizens may be claimed as a tax credit, and not a refund. Thus, where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[11]

WHEREFORE, the petition is PARTLY GRANTED. The Decision and Resolution of the Court of Appeals, dated October 19, 1999 and February 18, 2000, respectively, in CA-G.R SP No. 49946 are REVERSED and SET ASIDE. The Resolution of the Court of Tax Appeals, dated December 7, 1998, directing the issuance of tax credit certificates in favor of petitioner in the amounts of P45,574.63 and P135,906.48 is hereby REINSTATED. No costs.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 12-15, 30-32.

[3] Rollo, pp. 36-41.

[4] Rollo, pp. 42-43.

[5] Rollo, p. 68.

[6] Id. at 79.

[7] Rollo, p. 15.

[8] Emphasis supplied.

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

[10] Rollo, p. 27.

[11] Fianza v. People's Law Enforcement Board (PLEB), G.R. No. 109638, March 31, 1995, 243 SCRA 165.

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