REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SERGIO Y. HILADO and
HAWAIIAN-PHILIPPINE
COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 4123

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

10/25

D E C I S I O N

This case involves a claim for refund or tax credit of overpaid and overwithheld tax on compensation for the year 1985 in the amount of P16,699.30.

Petitioner, Sergio Y. Hilado (hereinafter referred to as "HILADO" for brevity) is a resident of Palo Santo St., Capitol Subdivision, Bacolod City and petitioner Hawaiian-Philippine Company (hereinafter referred to as HPCO for brevity) is a corporation organized under Philippine laws, with offices at Silay-Hawaiian Central, Negros Occidental.

In 1985, petitioner HILADO, then an employee of co-petitioner HPCO, received from the latter gross compensation income totaling P391,022.80 on which the amount of P104,805.91 was withheld and paid to respondent Commissioner of Internal Revenue (Annex A and Exhs. A. A-2, A-9, B, B-2, B-3, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, NN-1 and NN-2.)

Actually, the withholding tax should only have amounted to P88,106.61 and thus there was an overwithholding in the amount of P16,699.30, computed as follows:

Total compensation	P391,022.80
Less: Personal exemption . . .	8,500.00
	P382,522.80
Tax due on P382,522.80	P 88,106.61
Tax withheld (BIR Form W-2). .	104,805.91
Less: Tax Due	88,106.61
Tax overwithholding.	P 16,699.30

(Exhs. A, A,-2, A-3, A-4, A-5, A-6, A-7, A-8, B, B-1, B-2 and B-3.)

On April 15, 1986, petitioner HILADO filed his 1985 income tax return and BIR Form W-2 with respondent's Bureau and reported in said return compensation income of P391,022.80, business loss of P102,843.62, personal exemption of P8,500.00 as married taxpayer, total tax due of P88,106.61, total tax withheld of P104,805.91 and a refundable amount of P16,699.30.

Petitioner HILADO assigned his rights to petitioner HPCO.

On December 10, 1986, petitioners, through their counsel, filed a claim for refund or tax credit for the overpaid and overwithheld tax on the 1985 compensation of petitioner HILADO.

Respondent Commissioner of Internal Revenue has to date not yet granted petitioners' request for refund or tax credit.

The petition for review as well as the claim for refund or tax credit have both been filed within the prescriptive period.

The sole issue to be resolved is:

> Whether or not petitioners are entitled to the refund or tax credit of overpaid and overwithheld tax on 1985 compensation in the amount of P16,699.30.

The evidence on record show that petitioner HILADO had during the year 1985 overpaid and withheld tax of P16,699.30. The certificate of Income Tax Withheld on Compensation (BIR form W-2)[Annex A and Exhs. B, B-1, B-2 and B-3], as well as the Individual Income Tax Return of petitioner HILADO, proves that he had a gross compensation income of P391,022.81 (Annexes A & B and Exhs. A & A-2); exemption as married individual of P8,500.00 (Annex B & Exhs. A & A-3) and taxable compensation income of P382,522.80 (Annex B & Exhs. A & A-4). Under then Section 21(a) of the Tax Code, said gross compensation income of P382,522.80 is subject to income tax of P88,106.61 which is computed as follows:

First P250,000	P49,675.00
Amount in excess of P250,000,	
29% (P132,522.00 x 29%). . .	38,431.61
	P88,106.61

Evidence also show that the total amount of P104,805.91 was withheld by petitioner HPCO from gross compensation of petitioner HILADO (Annexes A & B; Exhs. A, A-9, B, B-3). Also, the evidence on record proves that said amount of P104,805.91 was remitted by petitioner HILADO to respondent's Bureau (Exhs. E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AA-1, AA-2, AA-3, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, NN-1 and NN-2.)

Inasmuch as petitioner HILADO's income tax liability during the year 1985 amounted to only P88,106.61 and the tax withheld on his compensation amounted to P104,805.91, the amount of P16,699.30 is overwithheld and hence refundable.

Respondent however avers that the course of action available to the employer HPCO is not a petition for review but rather an availment of the provisions of Section 9(1.B) of Revenue Regulation No. 12-86 dated August 11, 1986, which provides as follows:

> "SECTION 9. - TRANSITORY PROVISION.-
>
> 1. Refund or Credit. -
>
> A. Employee. - (a) xxx xxx
>
> B. Employer.- The total amount actually refunded by the employer to his employees shall be repaid from the remittable amount of taxes withheld for the current month in which the refund was made and in succeeding months thereafter until the overwithheld tax is fully repaid."

We believe that petitioner HPCO can avail of two options, either administrative, under Rev. Reg. No. 12-86, or under a judicial claim for refund or tax credit, which can not be denied it being a matter of judicial right under the law. (Sec. 292, National Internal Revenue Code.)

Since HILADO assigned to petitioner HPCO his rights to said overpaid tax (Annex C & Exh. C) on November 13, 1986, accordingly, **We grant in favor of petitioner HPCO a refund or tax credit of**

P16,699.30 representing the overpaid and overwithheld tax on the 1985 compensation of HILADO.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, October 25, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals