REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MR. ROBERT JOSEPH MAHLER and
DIGITAL MICROWAVE CORPORATION,
Petitioners,

- versus -

C.T.A. CASE NO. 6076

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 17 2002

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DECISION

This case involves a claim for refund in the amount of P1,885,262.45 plus six percent (6%) interest, allegedly representing excess or over withheld taxes on compensation of petitioner Robert Joseph Mahler by petitioner Digital Microwave Corporation for the calendar year 1997.

Petitioner Robert Joseph Mahler (petitioner Mahler, for brevity) is an American citizen, of legal age, single and with business address at 10 Ang Mo Kio Street 65, No. 03-13 Techpoint, Singapore.

Petitioner Digital Microwave Corporation (petitioner Corporation, for short) is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal place of business at 18th Floor, Multinational Bancorporation Center, 6805 Ayala Avenue, Makati City.

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For the calendar year 1997, petitioner Mahler was duly employed by petitioner Corporation as the Country Manager. As an employee of petitioner Corporation, Petitioner Mahler received compensation or remuneration for services which he performed for petitioner Corporation. Accordingly, taxes were deducted and withheld from such compensation of petitioner Mahler pursuant to Section 72 of the National Internal Revenue Code (NIRC), as amended, and the applicable rules and regulations therefor.

Consequently, On April 15, 1998, petitioner Mahler filed with the respondent, through an authorized agent bank, his Individual Income Tax Return (ITR) for the taxable year 1997 (Exhibit A). Said ITR reflected a taxable compensation income in the amount of P1,716,054.90 (Exhibit A-3) and a tax due thereon amounting to P514,816.47 (Exhibit A-4). However, the ITR and Certificate of Income Tax Withheld on Compensation reflected a total tax withheld for the period of P2,400,087.92 (Exhibit A-5 & Exhibit B-5) thereby showing an excess withholding tax in the sum of P1,885,262.45 (Exhibits A-6, A-7, A-8).

On March 31, 2000, petitioner Mahler assigned his rights and privileges for the collection and/or receipt from respondent of the excess or refundable withholding taxes from his compensation for the year 1997 to Digitel Microwave Corporation (Exhibit H).

By virtue of said assignment, petitioner Corporation filed with the Revenue District Office No. 49 (North Makati), a written claim for refund of the excess or refundable

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amount of withholding taxes of petitioner Mahler on April 14, 2000 (CTA records, pp. 9-11).

The instant Petition for Review was also filed on the same day, April 14, 2000 to toll the running of the prescriptive period.

By way of answer, respondent, had this to say:

> (1) The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
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> (2) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes;
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> (3) One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute;
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> (4) In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;
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> (5) It is incumbent upon Petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code; and
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> (6) Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence, not refundable.

To bolster its claim, petitioner corporation submitted documents and presented witnesses to identify the same. Respondent, on the other hand, was declared to have waived his right to present evidence (CTA records, p. 86) and neither did he submit a memorandum.

The parties in this case agreed that the following issues be subject for resolution by this Court, to wit:

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(1) Whether or not petitioners are entitled to a refund of P1,885,262.45, (plus interest at the rate of 6% per annum starting July 15, 1997, until the date the refund is made) representing the amount of excess or refundable withholding tax which is the difference between the amount of tax withheld by petitioner Corporation (P2,400,078.92) and the actual amount of withholding tax due (P514,816.47) from the compensation of petitioner Mahler, as clearly reflected in his 1997 individual ITR;

(2) Whether or not petitioner Mahler has validly assigned the right of collection of the subject excess or refundable withholding taxes to petitioner Corporation; and

(3) Whether or not petitioners have shown compliance with the provisions of then Sections 204(c) and 230 of the NIRC, as amended.

After a careful scrutiny of the facts in this case, issues involved, evidence on record, and the applicable laws, rules, regulations and jurisprudence, we rule against the petitioners.

Pursuant to Section 72 of the then Tax Code relied upon by the petitioners, it is provided that:

> **"SEC. 72.** ***Income tax collected at source.*** **– (a)** ***Requirement of withholding.*** – Every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with regulations to be prepared by the Secretary of Finance.
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> xxx xxx xxx

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(c) *Refunds or credits.* – (1) *Employer.* –xxx

(2) *Employees.* – The amount deducted and withheld under this Chapter during any calendar year shall be allowed as a credit to the recipient of such income against the tax imposed under Section 21(a) of this Title. Refunds or credits in cases of excessive withholding shall be granted under rules and regulations promulgated by the Secretary of Finance.

Any excess of the taxes withheld over the tax due from the taxpayer shall be returned or credited within three months from the fifteenth day of April. Refunds or credits made after such time shall earn interest at the rate of six per cent (6%) per annum starting after the lapse of the three-month period to the date the refund or credit is made."

It is clear from the individual ITR of petitioner Mahler that his taxable compensation income for the year 1997 was P1,716,054.90 (Exhibit A-3). Under then Section (22)(b) of the NIRC, [now Section 25(B)], income on compensation received by petitioner Mahler shall be subject to 30% tax or a total of P514,816.47 (Exhibit A-4). However, petitioner corporation withheld from the income on compensation of petitioner Mahler the amount of P2,400,078.92 (Exhibits B-5 & A-5). Thus, it appears that there was an over withholding of income tax on compensation in the sum of P1,885,262.45 (Exhibit A-7).

In support of its claim of over withholding of petitioner Mahler's income taxes on compensation for 1997, petitioner corporation submitted a Certificate of Income Tax Withheld on Compensation (Exhibit B). However, to prove the fact of withholding and remittance of income taxes on compensation for the year 1997, petitioner Corporation presented only the Monthly Remittance Return of Income Taxes Withheld covering the month of December 1997 (Exhibit D) and Debit Memo of PCIBank (Exhibit E) and the payment of compromise penalty (Exhibits F & G). In other words, petitioner Corporation only submitted proofs that it withheld and remitted income taxes on compensation for the month of December 1997 (Exhibits D & E).

It must be emphasized that the subject claim is for the refund of excess withholding taxes on compensation of petitioner Mahler for the calendar year 1997 and not for the month of December 1997 alone. And petitioner Corporation asserted that it withheld the amount of P2,400,078.92 on petitioner Mahler's compensation income for the whole year of 1997 (Exhibit B-5). But we have no way of knowing if the amount of P2,400,078.92 claimed as the total withholding taxes on petitioner Mahler's compensation income for 1997 was actually withheld and remitted to the Bureau of Internal Revenue. As we stated earlier, petitioner Corporation did not submit the monthly remittance returns of income taxes withheld for the months of January to November 1997.

Naturally, the first question that comes to our mind is how much of the total income taxes on compensation of petitioner Mahler for 1997 was withheld by the petitioner Corporation. Unfortunately, we have no means of determining the same. Second, did petitioner Mahler really deduct the amount of P2,400,078.92 for said period and was the said amount duly remitted to the Bureau?

We are not allowed to speculate. Section 14 of Article VIII of the 1987 Constitution expressly mandates that "no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. Relative thereto, the Supreme Court held that decisions must faithfully comply with

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Section 14, Article VIII of the Constitution (**Mangelen vs. Court of Appeals**, 215 SCRA 230). To put it differently, if there is no proof or basis within which a favorable judgment shall be made, then we are left with no other recourse but to deny the petition.

Further, we cannot theorize based on the scant documents extant that the amount of P2,400,078.92 formed part of the total taxes on compensation income of P5,081,779.55 (Exhibit D-4) taking into account that the latter pertained solely to income tax on compensation for the month of December 1997. But even assuming *arguendo*, that the P5,081,779.55 corresponds to the total withholding taxes on compensation for the year 1997 or that petitioner Mahler had earned income on compensation only in December 1997, still, it was not clearly indicated that the sum of P2,400,078.92 was part and parcel thereof.

In sum, petitioner Corporation should have presented as evidence the monthly remittance returns for the months of January to November 1997 or the yearly remittance return of income taxes withheld on compensation for the year 1997. More importantly, it should have submitted the Alphabetical List of Employees Gross Compensation Income and Tax Withheld for the Calendar Year 1997 to show the breakdown of the total income taxes withheld by petitioner Corporation on the compensation of all its employees for the year 1997, petitioner Mahler being one of them. These documents are vital in determining (1) the total taxes on compensation withheld and remitted to the Bureau for the whole year of 1997, (2) the total income received by petitioner Mahler for the same period and (3) the correct or incorrect withholding and remittance of taxes of petitioner

Mahler's income on compensation in 1997. Failure on the part of the petitioners to sustain the claim is fatal following the time-tested doctrine that claims for refund are construed strictly against the claimant.

Therefore, finding that petitioner Mahler is not entitled to the claim sought for, it would be an exercise in futility to delve on the second and third issues.

IN VIEW OF ALL THE FOREGOING, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence. No costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge

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