REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GOLDSTAR PHILIPPINES SALES CORPORATION (Now LG COLLINS ELECTRONICS MANILA, INC.),
Petitioner,

- versus -

C.T.A. CASE NO. 5715

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 1 1 2004

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DECISION

This is a judicial appeal from the inaction of the respondent on petitioner's protest on deficiency income tax assessment in the aggregate amount of P267,365,067.41 for the taxable year 1994.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 15 Francisco Legaspi Street, Maybunga, Pasig City. It is now known under the corporate name LG Collins Electronics Manila, Incorporated ***(paragraph 1, Joint Stipulation of Facts and Issues).***

On March 21, 1998, petitioner received Formal Assessment Notice No. 000004 and Demand Letter both dated February 16, 1998, covering the alleged deficiency income tax for taxable year 1994 in the total amount of P267,365,067.41. The deficiency income tax assessment arose from the following: a) disallowance of interest expense in the amount of P24,515,117.00 for being unsupported; b) disallowance of salary expense in the amount of P9,586,097.35 for not having been subjected to withholding tax on compensation; c) imputation of alleged undeclared sales in the amount of P7,729,388.12; and d) disallowance of brokerage fees in the amount of P346,091,296.47 for not having been subjected to expanded withholding tax **(paragraphs 3 & 4, Joint Stipulation of Facts & Issues)**. The said deficiency income tax was computed by respondent as follows:

Net Business Income		P105,639,471.00
Add: Discrepancies		
Interest Expense-lack of proofs		24,515,117.00
Salaries Expense-unreconciled		9,586,097.35
Undeclared Sales		
Sales per investigation	P844,238,605.12	
Sales per return	836,509,217.00	7,729,388.12
Brokerage, other charges-not subjected to EWT		346,091,296.47
Taxable Income		P493,561,369.94
Tax Due		P172,746,479.48
Less: Tax Paid		36,235,307.00
Deficiency Tax		P136,511,172.48
Add: 25% Surcharge		34,127,793.12
Interest 4-16-95 to 2-16-98		96,701,101.81
Compromise		25,000.00
TOTAL AMOUNT DUE & COLLECTIBLE		P267,365,067.41

On April 17, 1998, petitioner, through its external auditor, Sycip Gorres Velayo & Company (SGV), duly filed with the Bureau of Internal Revenue (BIR) an administrative protest against the subject income tax assessment ***(paragraph 5, Joint Stipulation of Facts and Issues)***.

Again, on June 16, 1998, petitioner filed with the BIR a supplemental protest, reiterating its disagreement to the subject deficiency income tax assessment. Petitioner requested for a reconsideration and/or reinvestigation of the assessment alleging that the same has no factual and legal basis ***(pages 155-158, BIR Records).*** Subsequently, petitioner transmitted to respondent the relevant supporting documents to support its position against the merit of the income tax assessment ***(paragraph 6, Joint Stipulation of Facts and Issues)***.

Without awaiting for the result of respondent's investigation, on January 11, 1999, petitioner elevated the case through a petition for review pursuant to Section 228 of the Tax Code.

On March 3, 1999, respondent issued a report on the investigation of the tax liability of petitioner. In the said report, the BIR examiners recommended a lower deficiency income tax in the amount of P10,557,736.28 ***(pages 200-203, BIR Records)***.

Summons was issued to respondent and in his Answer, he raised the following Special and Affirmative Defenses:

7. That the amount of P24,515,117.00 claimed by petitioner as alleged interest expenses are unsupported by sufficient proofs;

8. That the amount of P7,729,388.12 represented undeclared sales by the petitioner;

9. That the further amount of P346,091,296.47 as brokerage, other charges were not subjected to Expanded Withholding Tax as required by Revenue Regulations No. 6-85;

10. That the details in the assessment notice (Annex A-1) substantially complied with the provisions of Section 228 of the Tax Code of 1997 relative to the taxpayer being informed in writing of the law and the facts in which the assessment is based;

11. That the assessment notice dated February 15, 1998 (Annex A) is in accordance with law.

After trial on the merits, the case was submitted for decision on July 7, 2003 sans Memorandum of respondent.

The parties mutually agreed the following are the issues to be resolved by this court:

1. Whether or not Formal Assessment Notice No. 000004 dated February 16, 1998 covering the alleged deficiency income tax assessment issued against petitioner for taxable year 1994 sufficiently complies with the requirements of Section 228 of the NIRC, as amended;

2. Whether or not interest expense in the amount of P24,515,117.00 is sufficiently supported as a valid item of deduction from petitioner's gross income for taxable year 1994;

3. Whether or not salary expense in the amount of P9,586,097.35, which amount represents the difference between the salary expense reported in petitioner's audited financial statements for taxable year 1994 and the salary expense reported in petitioner's withholding tax returns for said taxable year, is subject to withholding tax on compensation and whether the same should be allowed as a valid item of deduction from petitioner's gross income for taxable year 1994;

4. Whether or not petitioner has undeclared sales for taxable year 1994 in the amount of P7,729,388.12;

5. Whether or not brokerage and other charges in the amount of P346,091,296.47 is subject to expanded withholding tax and thus, should be allowed as a valid item of deduction from petitioner's gross income for taxable year 1994.

Anent the first issue, petitioner maintains that respondent's Formal Assessment Notice as well as the Demand Letter violated the provision of Section 228 of the Tax

Code. It is provided in the said law that the law and the facts on which the assessment was made should be fully stated. Respondent failed to do so. Hence, the assessment and the demand letter are void.

Petitioner also opines that the said provision of the Tax Code is mandatory. It does not provide any exception which will make valid a void assessment. Consequently, Article 5 of the Civil Code, which states that "acts executed against the provisions of mandatory and prohibitory law shall be void, except when the law itself authorizes their validity."

We do not agree with petitioner.

Said Section 228 in part provides, viz:

> **Section 228.** *Protesting assessment.-* When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is a made; otherwise, the assessment shall be void.

The court took notice that petitioner attacked the validity of the Formal Assessment Notice and the Demand Letter mainly on the alleged failure of the respondent to inform petitioner of the facts and the laws upon which the assessment was based.

The records reveal that respondent substantially complied with the foregoing requirements of the Tax Code. This court had the occasion to elucidate this point in the case of ***Toledo Power Company vs. Commissioner of Internal Revenue, CTA Case No. 5881, promulgated March 2, 2002,*** to wit:

> Prescinding from the above law, ***it is crystal clear that the notice being referred to and required to be first sent to the taxpayer is the pre-assessment notice.*** This is apparent from the subsequent sentence which enumerates of the exceptions when no pre-assessment notice is necessary. Further, the next two paragraphs also relate to the first paragraph of Section 228. ***Thus, what the law mandates of the Commissioner or his duly authorized representative is to inform the taxpayer of the law and the facts on which the assessment is made. Undoubtedly, this refer to a pre-assessment notice because the third paragraph provides that if the taxpayer fails to respond to such notice, the Commissioner or his duly authorized representative shall issue an assessment based on his findings*** (emphasis supplied).

In the case at bar, we find the Pre-Assessment Notice to have sufficiently explained the basis for the assessment ***(pages 114-120, BIR Records).*** Moreover, the assessment notice and demand letter, both dated February 16, 1998, were received by the petitioner on March 21, 1998. Considering so, the court believes that petitioner was duly informed of the law and the facts, which are the bedrock of the assessment. It cannot be declared void.

On the second issue, respondent claims that the interest expense in the amount of P24,515,117.00, should be disallowed because petitioner failed to submit documentary evidence to support its claim. Respondent anchored his argument on Section 29 of the Tax Code.

Petitioner holds otherwise. It claims that such interest expense is sufficiently supported by documents to constitute a valid item of deduction from petitioner's gross income. According to petitioner, the said interest expense is stipulated in the loan agreement it entered into with PCI Bank for working capital requirements and its application for the opening of letters of credit with various banks in order to facilitate its importation during the year.

We find petitioner's view without merit.

In the case of ***Delfin Ma. V. Cruz, Jr. vs. Commissioner of Internal Revenue, CTA Case No. 3806, June 29, 1990*** and later on affirmed by the Court of Appeals in the case entitled ***Delfin Ma. V. Cruz, Jr. vs. The Court of Tax Appeals and the Commissioner of Internal Revenue, CA-G.R. SP No. 25308, April 7, 1992,*** the court ruled that in order for interest expense to be considered as deduction from gross income, the foremost requirement is that the obligation must be in writing, to wit:

> "Petitioner in this appeal presents a single issue, that is, "can an interest payment, where the obligation to pay the same is not evidenced in writing, be proven by collateral evidence and thus deductible for income tax purposes?" To which We have a negative answer.
>
> Section 30(b) of the Tax Code, as amended, provides:
>
> "Section 30(b). Interest:
>
> 1. In general.-That amount of interest paid or accrued within a taxable year on indebtedness incurred in connection with the taxpayer's profession, trade or business, except on indebtedness incurred or continued to purchase or carry obligation the interest upon which is exempt from taxation as income under this Title.
>
> xxx xxx xxx."
>
> Pursuant to the above-cited provision of the Tax Code, the following requisites must concur to validly claim deductibility of interest payment, to wit:
>
> 1. There must be an indebtedness;
> 2. The indebtedness must be that of the taxpayer;

3. The indebtedness must be connected with the business, trade or profession of the taxpayer;
4. The interest must have been paid or accrued during the taxable year; and
5. The interest must have been stipulated in writing (Teodoro & De Leon, The law on Income Taxation, 1987 Edition, p. 82).

From the foregoing, it may be clearly inferred that for interest payment to be deductible, the same must be supported by a written agreement of the indebtedness the term of which stipulate for the payment of an interest. This is in consonance with Article 1956 of the Civil Code, providing that:

"Article 1956. No interest shall be due unless it has been expressly stipulated in writing."

In other words, the written agreement of the indebtedness is an indispensable requirement to support a claim of deductibility of interest payment. For how could a claimant prove concurrence of all the said requisites without showing the written agreement of the indebtedness. Mere certification of the alleged creditor as to the existence of the debt and/or as to the payment of the interest thereon cannot dispense with the requisite of written agreement of the indebtedness. Otherwise, the law could be easily circumvented. (Underlining supplied.)

The court noted that in the report of the independent CPA, the disallowed interest expense in the amount of P24,515,117.00 was accounted for as follows ***(Exhibit E):***

Finding	Exhibit	Amount
a. Interest expenses supported by bank statements and bank reconciliation statements	A1	P 37,174.43
b. Interest expenses supported by bank official Receipts	B1	166,476.61
c. Interest expenses supported by bank confirmation statements	C1	582,318.98
d. Interest expenses supported by Company's letter of authority to debit its account	D1	2,059,447.40
e. Interest expenses supported by bank debit7		

Memorandum	E1	3,496,187.25
f. Interest expenses supported by bank statement and Company's letter of authority to debit its account	F1	9,178,556.89
g. Interest expenses supported by loan agreement and Company's computation of interest	G1	25,171,683.70
h. Subsequent reversal of accrued interest Expenses	H1	(16,333,579.81)
I. Interest expenses without supporting Documents	J1	156,851.55
TOTAL		**P24,515,117.00**

While petitioner submitted documents to substantiate its interest expense by bank statements, bank debit memoranda and letters of authority to debit its account, computations of interest and bank reconciliation, it failed to submit in evidence a vital document, which is the loan agreement. Except for a photocopy of a pre-marked document ***(Exhibit A-351)***, the court is unable to find any document purporting to be a loan agreement. Consequently, the court is constrained to disallow the deduction from the gross income the interest expense, which petitioner claims, for the latter's failure to substantiate its claim by clear and convincing proof.

On the third issue, respondent disallowed salaries and wages in the amount of P9,586,097.35 because it was allegedly not subjected to withholding tax on compensation. The disallowance was arrived at after the examiners compared the amounts declared in petitioner's 1994 withholding tax returns with that of the amounts reflected in its 1994 audited financial statements, detailed as follows:

Expense	Per WTW Returns	Per Audited Financial Statements	Difference
Salaries	P 11,172,600.00	P 11,892,973.00	P (720,373.00)
Bonus	4,000,000.00	10,989,338.00	(6,989,338.00)
Employees Benefits	2,265,028.65	4,140,875.00	(1,875,846.35)
Subtotal	P 17,437,628.65	P 27,023,186.00	P (9,585,557.35)
Unaccounted difference		540.00	(540.00)
Total	P 17,437,628.65	P 27,023,726.00	P (9,586,097.35)

Considering the foregoing table, respondent was of the impression that petitioner over declared its salaries and wages in its 1994 income tax return by P9,586,097.35, thus, the deficiency tax assessment.

On the other hand, petitioner claims that the disallowed salary expense represents the difference between the salary expense reported in petitioner's audited financial statements and the salary expense reported in petitioner's withholding tax return for taxable year 1994. Petitioner argues that this amount is a valid deduction from the gross income, since it came from items not subject to withholding tax on compensation. Petitioner analyzed the said amount as follows:

1.	De minimis benefits to promote the goodwill and health of petitioner's employees, which benefits are exempt from withholding tax on salaries and SSS, Medicare and EC contribution of petitioner as employer (Exhibits B-16 to B-22);	P 1,875,846.35
2.	Payments made to messengerial, janitorial and security agencies which were recorded as part of salaries but which have already been subjected to the expanded withholding tax under Revenue Regulations No. 6-85, as amended (Exhibits B-2 to B-6); and	720,373.00
3.	Accrual of bonus in taxable year 1994 which was paid in 1995-The Income tax on said bonus was withheld in taxable year 1995 (Exhibit B-7)	6,989,338.00
Total		**P 9,585,557.35**

Petitioner claims that the amount of P1,875,846.35 represents *de minimis* benefits that are exempt from withholding tax as long as the values are relatively small, are given by the employer as a means of promoting the health, goodwill, contentment, or efficiency of his employees. In addition, petitioner's payments to SSS, Medicare and EC are also exempt from withholding tax. They do not form part of employees' compensation package but are petitioner's share as required by law. They are not subject to withholding tax and are deductible expense from gross income pursuant to Section 29 of the Tax Code.

After considering the arguments of the parties as well as the relevant laws and jurisprudence, we rule to reduce the disallowed item in the amount of P839,220.35.

For one thing, among the documents presented by petitioner to support its *de minimis* benefits and SSS, Medicare and EC contributions ***(Exhibits B-24 to B-357),*** only the total amount of P120,985.99 was properly substantiated by invoices and official receipts for income tax purposes, broken down as follows:

DE MINIMIS BENEFITS

CV/JV	EXHIBIT	REFERENCE NO.	AMOUNT
CV12493	B-268	S-1052	P 1,581.82
CV8650	B-261	OR10961	10,380.15
JV65	B-302	OR3160	6,360.00
JV29	B-225	OR7216	379.85
CV11916	B-272 to B-284	various	6,132.13
JV65	B-302	OR3169	6,360.00
JV48	B-239	I26819	2,466.50
JV28	B-249	OR966	1,600.00
JV33	B-242 to B-246	various	20,787.28
JV35	B-247	R6620	4,250.00
JV34	B-338 to B-350	various	51,759.86
JV32	B-259	various	3,928.40
JV21	B-253	PR007	5,000.00
TOTAL			**P 120,985.99**

The court observed that the independent CPA had already examined the relevant supporting documents of the vouchers listed in Exhibits B-16 to B-22 and technically disallowed the amount of P134,397.52 ***(E2 & F2 of Exhibit E).*** However, the documents verified were not offered as evidence.

Well settled is the rule that exhibits presented shall not be considered by this court if they have not been formally offered ***(Ty vs. Court of Appeals, 278 SCRA 836; Philippine Associated Smelting and Refining Corporation vs. Hon. Commissioner of Internal Revenue, CTA Case No. 5377, promulgated March 24, 1999 and Maitland-Smith Cebu, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5476, promulgated on September 23, 1998).*** Hence, in arriving in the said amount the court considered only the vouchers with their supporting receipts.

As to the amount of P720,373.00 representing payments to agencies, the court agrees with petitioner. The taxes required to be withheld from the income payments can be traced from the lists of payees attached to the Monthly Remittance Returns of Income Taxes Withheld ***(Exhibits D-1308 to D-1356).*** However, the aggregate amount of P2,138.64 found in the summary list of payments to agencies ***(Exhibits B-2 to B-6)*** should be disallowed, since it does not form part of the lists of payees attached to the Monthly Remittance Returns of Income Taxes Withheld. Thus, only the amount of P718,233.36 is allowed as a deduction from gross income.

Thirdly, on the accrued bonuses for taxable year 1994 in the amount of P6,989,338.00 which petitioner alleged that the income tax was withheld in 1995, the court disallows the same for failure of petitioner to withhold the corresponding taxes in 1994 in accordance with Section 29(j) of the 1994 Tax Code which provides:

SECTION 29. *Deductions from gross income.*

x x x *x x x* *x x x*

> *(j) Additional requirement for deductibility of certain payments.-* Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this section, Sections 51 and 74 of this Code.

The above proviso was amplified by Section 3 of Revenue Regulations No. 8-90, to wit:

> SECTION 3. Section 9 of Revenue Regulations No. 6-85 is hereby amended to read as follows:
>
> "Sec. 9. (a) Requirement for deductibility. Any income payment, which is otherwise deductible under Sections 29 and 54 of the Tax Code, as amended, shall be allowed as a deduction from the payor's gross income only if it is shown that the tax required to be withheld has been paid to the Bureau of Internal Revenue in accordance with Sections 50, 51, 72, and 74 also of the Tax Code.

Based on the above law and regulations, an expense shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue whether the same is paid or **payable.** Therefore, for failure to withhold income tax on the accrued bonus, petitioner cannot claim it as a deduction from its gross income.

In sum, out of the total unreconciled amount of P9,586,097.35, only the amount of P839,220.35 was verified by the court. Apparently, petitioner still failed to substantiate the amount of P8,746,877.00, computed hereunder:

	DISALLOWANCE PER RESPONDENT'S EXAMINATION	SUBSTANTIATED EXPENSES PER COURT'S VERIFICATION	UNSUPPORTED EXPENSES
Salaries	P 720,373.00	P 718,234.36	P 2,138.64
Bonus	6,989,338.00		6,989,338.00
Employees' Benefits	1,875,846.35	120,985.99	1,754,860.36
Unaccounted difference	540.00		540.00
TOTAL SALARIES & WAGES	**P 9,586,097.35**	**P 839,220.35**	**P 8,746,877.00**

On the fourth issue of whether or not petitioner under declared its sales for the taxable year 1994, respondent concluded so after comparing the total income declared in its 1994 Income Tax Return and the total sales declared in its 1994 Quarterly VAT Returns. Respondent found that petitioner under declared its sales in the amount of P7,729,388.12, computed as follows:

PER ITR		
Net Sales	P 828,490,272.00	
Add: Other Income	5,582,115.00	
Realized foreign gain	2,436,830.00	P 836,509,217.00
PER VAT RETURNS		844,238,605.12
UNDECLARED SALES		P 7,729,388.12

The reasons for the discrepancy were confirmed by the commissioned independent CPA who accounted the alleged undeclared sales, *viz*:

Prompt payment sales discounts deducted for income tax purposes but not for VAT purposes	P (21,784,921.73)
Reversal of provision for sales discounts subjected to income tax	7,427,686.00

SEC. 6. Computation of output tax on sale of domestic goods and services.-

(a) x x x
(b) x x x
(c) x x x

In computing the taxable base during a quarter, the following shall be allowed as deductions from gross selling price or gross receipts:

(a) Discounts granted and determined at the same time of sale which are expressly indicated in the invoice, and the amount thereof forms part of the gross sales duly recorded in the books of accounts.

Discounts conditioned upon the subsequent happening of an event or fulfillment of certain conditions, such as **prompt payment** or attainment of sales goals, shall **not be** allowed as deductions.

(b) Sales returns and allowances for which a proper credit or refund was made during the quarter to the buyer for sales previously recorded as taxable sales. (Underlining supplied.)

After a careful scrutiny of the documents offered by petitioner, the court verified only the amount of P15,926,181.24 as prompt payment discounts contrary to petitioner's claim of P21,784,921.73. The said amount is broken down as follows:

PROMPT PAYMENT DISCOUNTS

PER OFFICIAL RECEIPTS	VERIFIED AMOUNTS
January	P 906,633.42
February	881,857.96
March	1,031,916.63
April	1,526,095.92
May	1,302,631.61
June	
July	989,760.78
August	1,293,172.31
September	1,222,935.59
October	976,579.84
November	1,263,503.94
December	1,435,417.69
Subtotal	**P12,830,505.69**

PER CREDIT MEMO

Exhibit	Reference No.	Date	Amount
C-823	2522	12/30/1994	P 12,980.07
C-825	2523	12/30/1994	14,185.40
C-827	2524	12/30/1994	2,238.42
C-829	2517	12/30/1994	1,476,190.76
C-834	2520	12/30/1994	526,978.18
C-836	2521		134,764.11
C-838	2518	12/30/1994	72,643.43
C-840	2519	12/30/1994	6,157.57
C-842	2525	12/30/1994	2,786.53
C-844	2526	12/30/1994	826.47
C-847	1611	7/31/1994	269,427.77
C-853	1613	7/31/1994	7,425.68
C-855	Covered	7/30/1994	7,418.03
C-857	1575	7/30/1994	1,150.37
C-859	1576	7/30/1994	1,147.50
C-861	1577	7/30/1994	1,961.70
C-863	1578	7/30/1994	10,533.58
C-865	1579	7/30/1994	2,899.87
C-867	1580	7/30/1994	1,652.80
C-869	Covered	7/30/1994	43,128.21
C-871	Covered	7/30/1994	56,124.74
C-873	Covered	7/30/1994	870.04
C-875	1512	7/31/1994	166,661.02
C-878	1508	7/31/1994	232,842.82
C-881	1509	7/31/1994	10,800.60
C-883	1510	7/31/1994	2,768.40
C-885	1511	7/31/1994	29,111.48
Subtotal			**P 3,095,675.55**
Total			**P15,926,181.24**

Considering that petitioner's gross sales for income tax purposes are greater than the gross sales declared in the VAT returns, petitioner will no longer have undeclared sales, to wit:

PER ITR

Net Sales	P 828,490,272.00	
Other Income	5,582,115.00	P 834,072,387.00
Add: prompt payment discount not allowable for VAT purposes		

per court's verification	15,926,181.24
Gross Sales/Other Income (excluding Forex gain)	P 849,998,568.24

PER VAT RETURNS

Vatable Sales/Income (Exhibits F, F-1 to F-3)	P 838,261,407.78
Exempt Sales (Exhibits F, F-1 to F-3)	6,342,045.21
Gross Sales/Other Income	P 844,603,452.99
Discrepancy (subject to VAT at 10%)	P 5,395,115.25

On the last issue, respondent assessed petitioner for the brokerage fees and other charges in the sum of P346,091,296.47 for not having been subjected to 5% expanded withholding tax. The amount of P346,091,296.47 was computed as follows ***(page 201, BIR Records):***

Importation Cost		P492,564,374.75
Less: Trust Receipts Payable	P 97,708,566.38	
Import Duty	48,735,262.90	
Import Processing Fee	29,250.00	146,473,079.28
Brokerage, Others		P346,091,296.47

Petitioner asserts that respondent erred in evaluating the whole amount of P346,091,296.47 as brokerage fees subject to the 5% withholding tax. Petitioner alleges that its importations have a total cost of P499,838,219.77 which was composed of the following:

Trust Receipt	P 362,199,624.16
Import duty/processing fee	132,613,696.40
Brokerage, Others	5,024,899.21
Total	P 499,838,219.77

The above breakdown of importations was verified by the independent CPA and was adopted by the examiners in their amended report ***(page 201, BIR Records).*** The "Brokerage, Others" in the amount of P5,024,899.21 was further accounted for as follows:

	Amount
Brokerage	P 4,979,767.03
Interest	40,759.60
Service	4,372.68
Total	P 5,024,899.31

The court examined the schedules of importations ***(Exhibit D-5)*** and we scrutinized petitioner's Monthly Remittance Returns of Income Taxes Withheld ***(Exhibits D-1308, D-1313, D-1317, D-1321, D-1325, D-1329, D-1333, D-1337, D-1342, D-1347, D-1352 & D-1356).*** We found that of the brokerage fees, only the amount of P687,566.60 was subjected to 5% withholding tax. Petitioner failed to fully substantiate the amount of P4,292,200.43. Hence, we rule to disallow the said unsubstantiated amount.

Therefore, respondent's assessment for deficiency income tax is upheld in the reduced amount of P27,181,887.82, computed below:

Net Business Income	P 105,639,471.00
Add: Discrepancies	
Interest Expense-lack of proofs	24,515,117.00
Salaries Expense-unreconciled	8,746,877.00
Brokerage, other charges not subjected to EWT	4,292,200.43
Taxable Income	P 143,193,665.43
Tax Due	P 50,117,782.90
Less: Tax Paid	36,235,307.00
Deficiency Tax	P 13,882,475.90
Add: 25% Surcharge	3,470,618.98
Interest 4-16-95 to 2-16-98	9,828,792.94
TOTAL AMOUNT DUE & COLLECTIBLE	**P 27,181,887.82**

Accordingly, petitioner is **ORDERED** to **PAY** the respondent Commissioner of Internal Revenue the amount of P27,181,887.82 representing petitioner's deficiency income tax for the taxable year 1994, plus 20% delinquency interest from March 18, 1998 until the amount is fully paid pursuant to Section 249(c)(3) of the 1994 Tax Code.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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 Justice