REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LG COLLINS ELECTRONICS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6186

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 09 2004

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DECISION

This is an assessment case involving deficiency income, expanded withholding and documentary stamp taxes as well as penalties for late payment of withholding taxes on compensation for the year 1995 in the aggregate amount of P59,745,325.98.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at No. 15 Francisco Legaspi Street, Bo. Maybunga, Pasig City.[1] It is now known as LG Collins Electronics Manila, Incorporated (LGCEM) as a result of the merger of the two (2) corporations whereby LGCEM was the surviving corporation.[2]

On December 29, 1999, petitioner received a Preliminary Collection Letter from the Chief of the Collection Division of Revenue Region No. 8 of the Bureau of Internal Revenue (BIR) requesting petitioner to pay within ten (10) days from receipt thereof its

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[1] Joint Stipulation of Facts and Issues, par. 1.
[2] *Ibid*, par. 3.

alleged deficiency income, expanded withholding and documentary stamp taxes (DST) liabilities, as well as penalties for late payment of withholding tax on compensation for taxable year 1995, in the total amount of P59,745,325.98.[3]

It is the averment of the petitioner that except for the said Preliminary Collection Letter, it never received any formal assessment notice or communication from the BIR of the alleged deficiency income, expanded withholding and DST assessments for taxable year 1995 since the formal assessment notices for these deficiency tax assessments were mailed to its old address at 3rd Floor, Collins Building, 167 EDSA, Quezon City.[4] Petitioner further asserts that at the time of the issuance of the formal assessment notices, it had already transferred its principal place of business to No. 15 Francisco Legaspi Street, Barrio Maybunga, Pasig City. And respondent, through the Revenue District Officer of BIR Revenue District No. 43, was allegedly been informed of such transfer as early as July 6, 1998.[5]

The parties jointly stipulated on how the subject deficiency assessments came about, to wit:

> 1) The deficiency income tax assessment for taxable year 1995 arose from the following:
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> a. Disallowance of advertising and promotions in the amount of P37,160,000.00 as a deduction for income tax purposes on the ground that no supporting documents were attached to Journal Voucher (JV) No. 9510-55, which set up the said amount as an accrued expense for taxable year 1995;
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> b. Disallowance of inventory writedown in the amount of P1,052,416.00 as a deduction for income tax purposes on the ground that petitioner failed to secure the necessary clearance from the BIR for the writedown;

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[3] Exhibit I.
[4] Petition for Review, par. 4.
[5] *Ibid*, par. 5.

c. Disallowance of salesmen incentives in the amount of P13,394,312.17 as a deduction for income tax purposes on the ground that the same were not subjected to withholding tax;

d. Imputation of undeclared service income in the amount of P6,493,955.52, which was arrived at as follows:

Service Income per VAT returns	P7,503,671.74
Service Income per General Ledger	1,003,716.20
Undeclared Service Income	6,493,955.52

e. Imputation of undeclared other income in the amount of P1,038,021.78, which represents the difference between the ads subsidy received by petitioner from its mother company in Korea in the amount of P21,900,380.00 and the amount booked and offset against ads and promo in the amount of P19,909,436.00 under JV No. 9512-047 dated December 31,1995;

f. Disallowance in the amount of P44,438,444.00 as a deduction for income tax purposes on the ground that this amount is unsupported.

2) The deficiency expanded withholding tax (EWT) assessment for taxable year 1995 allegedly arose because the EWT on certain income payments was not deducted and withheld or the EWT was withheld but not remitted. The alleged EWT was computed as follows:

Nature of Payment	Amount	Rate	EWT Due
Purchases	530,177,456.00	1%	5,301,774.56
Brokerage Fees	5,951,681.28	5%	297,584.06
Freight & Delivery	2,021,196.18	1%	202,119.64
Postage & Parcel	598,588.00	1%	5,985.88
Rent	5,963,478.14	5%	298,173.90
Advertising & Promotion	250,353.20	5%	12,517.66
	31,424.00	20%	6,284.80
	2,779,777.10	10%	277,977.71
	7,740,223.00	1%	774,060.23
Repairs & Maintenance	624,540.00	1%	6,245.40
Professional Fees	55,785.00	10%	5,578.50
Sales Commission	1,809,551.36	10%	18,095.14
Office Supplies	1,313,797.00	1%	13,137.97
Communications	41,716.00	1%	417.16
Transportation &			

Travel	990,360.00	1%	9,903.60
Incentives	227,094.00	10%	22,709.40
Service Expense	878,248.00	1%	8,872.48
Security Services	1,940,902.00	1%	9,061.35
Janitorial Services	40,771.00	1%	31,722.78
Others	906,135.00	1%	48,298.00
Office Equipment	2,182,763.00	1%	21,827.63
Miscellaneous - Others	9,845.00	10%	984.50
EWT Due			7,393,052.00
Less: Remittances			6,868,541.07
Deficiency EWT			**524,511.97**

3) The deficiency DST assessment for taxable year 1995, arose because petitioner allegedly failed to pay the DST on the following: (a) increase of authorized capital stock from P4.2 million to P100 million; and (b) issuance of shares of stock previously declared as dividends in the amount of P45.8 million.

4) The penalties for late payment of withholding tax on compensation being assessed against petitioner for taxable year 1995 arose from the late remittance of withholding tax on the special bonus given to officials of petitioner in the total amount of P10,000,000.00.[6]

On January 28, 2000, petitioner, through its external auditor, Sycip Gorres Velayo and Company (SGV), filed a letter with the BIR, manifesting its protest against the above-mentioned deficiency assessments. On March 28, 2000, petitioner filed a supplemental protest and submitted therewith all the relevant supporting documents in support of its position against the merit of the assessments.[7]

Claiming inaction on the part of the respondent, the instant petition was filed on October 24, 2000.

By way of Special and Affirmative Defenses, the respondent states that:

a) Taxes are the lifeblood of the government. Thus, the same should be collected without unnecessary hindrance or delay. It is the means by which the government is able to defray the expenses necessary for its existence. Concomitantly, tax laws should be strictly construed against the taxpayer and

[6] Joint Stipulation of Facts and Issues, pars. 4-7.
[7] *Ibid*, pars. 8-9.

those claiming refund or exemption must undoubtedly prove their entitlement to the same;

b) Petitioner failed to submit all relevant documents in support of its protest;

c) The right of the taxpayer to protest the assessment issued against it has already prescribed. Under Section 228 of the National Internal Revenue Code of 1997, an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from the filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. A taxpayer adversely affected by the decision or inaction of the Bureau of Internal Revenue may appeal to the Court of Tax Appeals within thirty days from receipt of the said decision, or from the lapse of 180-day period, otherwise, the decision will become final, executory and demandable. It is to be noted that a Preliminary Collection Letter was already served upon the taxpayer as it failed to protest the assessment issued against it within the reglementary period provided under Section 228 of the National Internal Revenue Code of 1997;

d) The taxpayer failed to comply the requirements set forth in Section 11 of Revenue Regulation 12-85. Section 11 of the said Revenue Regulation specifically states that:

> Section 11. Change of Address- In case of change of address, the taxpayer must give written notice thereof to the Revenue District Office or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR National Office, Quezon City, and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.

e) The assessment was issued in accordance with laws and revenue regulations; and

f) All presumptions are in favor of the correctness of tax assessments.

Petitioner presented evidence to support its case but respondent was considered to have waived his right to present evidence in view of the repeated failure of his counsel to present the same.[8]

The parties mutually agreed on the issues to be resolved in this case, *viz*:

1) Whether or not the deficiency income, EWT and DST assessments issued by respondent against petitioner for taxable year 1995 in the total amount of P59,745,325.98 are void for failure by respondent to state the facts and the law on which the assessment are made in violation of Section 228 of the NIRC, as amended;
2) Whether or not the deficiency income, EWT and DST assessments issued by respondent against petitioner for taxable year 1995 in the total amount of P59,745,325.98 were issued beyond the three-year period prescribed by law for the issuance of tax assessments;
3) Whether or not the disallowed advertising and promotion expense in the amount of P37,160,000.00 for taxable year 1995 is duly supported as a valid and legitimate item of deduction for income tax purposes;
4) Whether or not the disallowed inventory writedown in the amount of P1,052,416.00 for taxable year 1995 represents destroyed inventory items, the destruction of which requires prior clearance from the BIR;
5) Whether or not the disallowed salesmen incentives in the amount of P13,394,312.17 for taxable year 1995 represent discounts given to dealers of petitioner for taxable year 1995 and are not subjected to EWT;

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[8] Resolution, CTA Records, page 165.

6) Whether or not petitioner has undeclared service income in the amount of P6,493,955.52 for taxable year 1995;

7) Whether or not petitioner has undeclared other income in the amount of P1,038,021.78 for taxable year 1995, which amount represents the difference between the ads subsidy received by petitioner from its mother company in Korea in the amount of P21,900,380.00 and the amount booked and offset against ads and promo under JV No. 9517-047 dated December 31, 1995 in the amount of P19,909,436.00;

8) Whether or not the deficiency EWT assessment issued against petitioner for taxable year 1995 in the amount of P524,511.97 arose from income payments, which are not subject to EWT;

9) Whether not petitioner paid DST due on the following: a) Increase in authorized capital stock from P4.2 million to P100 million; and b) Issuance of shares previously declared as dividends in the amount of P45.8 million; and

10) Whether or not the withholding tax on the special bonus given to the officials of petitioner in the amount of P10,000,000.00 accrue at the time of its payment in taxable year 1996.

Petitioner insists that it never received any formal assessment notice from the BIR for the alleged deficiency income, expanded withholding and DST taxes for the year 1995 and that the Preliminary Collection Letter *(Exhibit I)* was the first official communication from the BIR regarding said assessments. Although the Preliminary Collection Letter made mention of an assessment notice dated April 13, 1999 sent to the petitioner, petitioner argues that at the time of the issuance of the formal notice(s) it had already transferred its principal place of business. Respondent, through the Revenue

District Officer of BIR Revenue District No. 43, was informed of such transfer as early as July 6, 1998. Thus, the said Preliminary Collection Letter should be considered as the formal assessment notice itself.

Respondent, on the other hand, counters that petitioner failed to comply with the requirements set forth in Section 11 of Revenue Regulations No. 12-85. Hence, the assessment notice(s) sent to its former business address as appearing in its tax return for the period involved was considered valid and binding for purposes of the period within which to reply.

It is worth mentioning that the petitioner did not present the letter allegedly informing the BIR of its transfer to another place of business. Nor can we find the same in the BIR Records. But an examination of an assessment notice with number 000026 and stamped "date issued" April 13, 1999 *(page 384, BIR Records)* reveals that the address written thereon was 15 F. Legaspi Street, Maybunga, Pasig City underneath was "(3rd Flr., Collins Bldg., 167 EDSA)". So whether or not respondent sent said assessment notice to petitioner's new address is for the former to prove considering that the latter contested receiving such assessment notice. It is decretal that if the taxpayer denied ever having received an assessment from the Bureau of Internal Revenue, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The presumption that a mailed letter is deemed received by the addressee in an ordinary course of mail is merely a disputable presumption, subject to controversion. Thus, the moment the petitioner denied having received the assessment notice, the burden is now shifted to the respondent to prove receipt thereof by the former.[9]

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[9] Republic vs. The Court of Tax Appeals, and Nielson and Co., Inc., GR No. L-38540, April 30, 1987.

In the case at bar, respondent failed to prove that he sent the formal assessment notice to petitioner's new address. A scrutiny of the above-mentioned assessment notice does not show that the same was sent to the petitioner much more received by it or its authorized representative. Failure of the respondent to establish receipt by the petitioner of the subject assessment notice renders the assessment notice invalid. It is thus as if there was no assessment notice issued. The Supreme Court in the case of *Commissioner of Internal Revenue versus Pascor Realty and Development Corp., et al.*[10] held that "an assessment contains not only a computation of tax liabilities, but also a demand for payment within the prescribed period. It also signals the time when penalties and interest begin to accrue against the taxpayer. To enable the taxpayer to determine the remedies thereon, due process requires that it must be served and received by the taxpayer." Therefore, we are constrained to consider the Preliminary Collection Letter as the first formal communication received by the petitioner relative to the subject assessments thereby serving as the assessment notice itself.

In the case of *United International Pictures AB versus Commissioner of Internal Revenue, CTA Case No. 5884, promulgated on June 5, 2002*, we ruled that:

> A preliminary collection letter presupposes the existence of a valid assessment notice. Inasmuch as We already ruled that respondent failed to prove that the assessment was validly issued against petitioner, the latter may consider the preliminary collection letter as the assessment notice in itself for its internal revenue liabilities for 1994 in line with the Supreme Court decision in Republic versus Court of Appeals (149 SCRA 351) and cited in Commissioner of Internal Revenue versus Paseo Insurance Agency, Inc. and the Court of Tax Appeals (CA-GR SP No. 33526, February 24, 1995).

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[10] G.R. No. 128315, June 29, 1999

Petitioner further asserts that the assessment for deficiency income, expanded withholding and documentary stamp taxes is void for having been issued beyond the three-year prescriptive period allowed by law. Under Section 203 of the Tax Code, as amended, it is provided that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return provided that in cases where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.

In the present case, petitioner filed its annual income tax return for the year 1995 on April 15, 1996.[11] Therefore, respondent had three years therefrom or until April 15, 1999 to assess petitioner of any deficiency income tax. Inasmuch as the Preliminary Collection Letter was issued by the respondent only on December 7, 1999, the assessment for deficiency income tax for the year 1995 has already prescribed.

We agree with the petitioner insofar as the deficiency income tax assessment is concerned.

Petitioner filed the annual income tax return for the year 1995 on April 15, 1996 and the assessment notice by way of a Preliminary Collection Letter was issued on December 7, 1999. Clearly, it had already prescribed. Assessments made beyond the prescribed period would not be binding on the taxpayer.[12] However, with respect to the assessment for expanded withholding taxes and documentary stamp taxes, we cannot rule that the same had prescribed. Under the law aforementioned, the three-year period to assess shall be counted from the filing of the return. Petitioner did not submit the monthly remittance return of income taxes withheld for the taxable year 1995. Nor did it

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[11] Exhibit J.
[12] Tupaz vs. Ulep, et al. G.R. No. 127777, October 1, 1999.

present in evidence the documentary stamp tax return for the said period. Thus, we have nothing to base the counting of the three-year period from.

Petitioner also claims that the assessment is void for failure of the respondent to inform it in writing of the law and the facts on which the assessment is made.

We concur.

Under Section 228 of the Tax Code, as amended, it is provided that the taxpayer should be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. A perusal of the Preliminary Collection Letter discloses that the same contained no information on how the deficiency assessments were arrived at as it merely contained figures. Granting that the petitioner was able to comprehensively argue and contradict the findings of the respondent in its protest letter[13] that at first blush we may think that it had prior notice of the assessments before it received the Preliminary Collection Letter. However, petitioner explained that the details of the assessments were verified by its tax lawyers from the BIR after it received the said collection letter.[14]

We are convinced.

A mere reading of the Preliminary Collection Letter, the petitioner or anyone for that matter, would not be able to determine how the deficiency income, expanded withholding and documentary stamp taxes assessments were computed and what were the bases therefor. There were no specifications on how much deficiency pertains to a particular type of tax. The Preliminary Collection Letter only showed the total alleged deficiency taxes with no explanation whatsoever of their factual and legal bases.[15] In

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[13] Annex B, Petition for Review.
[14] TSN, June 25, 2001, pages 15-16, 23 & 26.
[15] Exhibit I, TSN, June 25, 2001, pages 13-15, 24-26.

sum, the requirement of Section 228 of the Tax Code, as amended, had not been complied with. Hence, the assessment is void. This being the case, it is no longer necessary to delve on the remaining issues.

IN VIEW OF THE FOREGOING, the instant petition is hereby **GRANTED**. Accordingly, the assessment for deficiency income, expanded withholding and documentary stamp taxes, as well as the penalties for late payment of withholding tax on compensation issued against petitioner for taxable year 1995 in the total amount of P59,745,325.98 is **CANCELLED** and **SET ASIDE.**

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